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Agreement between the Kingdom of Swaziland and the Republic of South Africa relating to the establishment of an office for a Swaziland labour representative in the Republic and certain ancillary matters

Government Notice 121 of 1975

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Agreement between the Kingdom of Swaziland and the Republic of South Africa relating to the establishment of an office for a Swaziland labour representative in the Republic and certain ancillary matters

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Agreement between the Kingdom of Swaziland and the Republic of South Africa relating to the establishment of an office for a Swaziland labour representative in the Republic and certain ancillary matters

Government Notice 121 of 1975

Assented to on 22 September 1975

Commenced on 22 September 1975

[This is the version of this document at 1 December 1998.]

For purposes of general information the full text in English of the Agreement between the Kingdom of Swaziland and the Republic of South Africa relating to the establishment of an office for a Swaziland labour representative in the Republic and certain ancillary matters is hereby published in the Schedule hereto.

Whereas certain arrangements governing the employment of Swaziland citizens in the Republic of South Africa, the movement of such persons across the common border, the documentation of Swaziland citizens and the establishment of Passport Control Posts along the common border have been in existence since 1st July, 1963; and

Whereas it is in the interest of both Governments that a Swaziland Government Labour Representative be stationed in the Republic of South Africa; and

Whereas it is considered necessary also to make sundry provision for additional matters affecting Swaziland citizens in the Republic of South Africa;

Now, thereofre, both countries have agreed as follows:

Article I

- (a) The Government of the Kingdom of Swaziland shall establish in the Republic of South Africa a Swaziland Government Labour Office (hereinafter called "the Labour Office").
- (b) The Government of Swaziland shall with the concurrence of the Government of the Republic of South Africa appoint a Swaziland Government Labour Representative (hereinafter called the "Labour Representative") who shall reside in the Republic of South Africa and shall be in charge of the Labour Office established in terms of Article 1(a) hereof. The Labour Representative appointed in terms hereof shall be a citizen of Swaziland and a full-time official of the Government of Swaziland.
- (c) The Government of Swaziland may appoint such other staff to this office as may reasonably be required.
- (d) The Government of the Republic of South Africa shall, with due regard to South African legislation, assist the Government of Swaziland to acquire suitable office and residential accommodation for the Labour Representative and members of his staff and their families.

Article II

- (a) The Labour Representative and such members of his staff as are citizens of Swaziland shall be accorded the following privileges and immunities while employed in the Labour Office as full-time Government officials:
 - (i) Inviolability of their offices and archives from search or seizure;
 - (ii) immunity from prosecution by the South African authorities in respect of acts committed in the exercise of their official functions;
 - (iii) protection of their residences; provided that the privileges and immunities set out in this and the two preceding subparagraphs may, upon written notice by the Government of the Republic of South Africa to the Government of Swaziland, be withdrawn in the case of an official who engages in activities which are, in the opinion of the Government of the Republic of South Africa, prejudicial to the security of the Republic of South Africa;
 - (iv) exemption from South African income and personal taxes, provided that such officials are not ordinarily resident in the Republic of South Africa for purposes other than in their capacity as employees of the Government of Swaziland in terms of this Agreement;
 - (v) exemption from South African legislation concerning employment in the Republic of South Africa.
- (b) It shall be the duty of officials who enjoy the privileges and immunities referred to in paragraph (a) to respect the laws and regulations of the Republic of South Africa.
- (c) The Government of the Republic of South Africa shall issue to the officials referred to in paragraph (b) identification cards, suitably inscribed, for the purpose of facilitating the implementation of the provisions of paragraph (a). The Government of Swaziland shall for the same purpose furnish the Government of the Republic of South Africa with the names and residential addresses of all such officials.
- (d) Upon the completion of the tour of duty of the officials referred to in paragraph (b) the identification cards referred to in paragraph (c) shall be returned to the Government of the Republic of South Africa.

Article III

- (a) The functions of the Labour Representative and his staff shall be to:
 - (i) consult with the Government of the Republic of South Africa on the conditions of employment of Swaziland citizens in the labour market in the Republic of South Africa and other matters relating thereto;
 - (ii) ensure that labourers from Swaziland comply with South African requirements concerning entry, identification and documentation; assist, when necessary, with such identification and with applications for documentation; and generally to encourage labourers to comply with such requirements;
 - (iii) consult with the Government of the Republic of South Africa on matters affecting the welfare and housing of Swaziland citizens who are employed in the Republic of South Africa or whose employment contracts have expired;
 - (iv) administer in consultation with the Government of the Republic of South Africa, tax collections, deferred pay, family remittances and workers' welfare funds in respect of Swaziland citizens employed in the Republic of South Africa;
 - (v) assist the Government of the Republic of South Africa with the repatriation of sick, injured or destitute Swaziland citizens who are or were employed in the Republic of South Africa and of other such citizens whose presence in the Republic of South Africa is or has become unlawful;

- (vi) encourage Swaziland citizens in need of advice and assistance to utilise the facilities of the office of the Labour Representative;
 - (vii) consult, with the concurrence of the Government of the Republic of South Africa, the employers concerned with regard to the attestation, repatriation and other matters relating to the employment of Swaziland citizens in the Republic of South Africa;
 - (viii) provide, at the request of the Government of the Republic of South Africa, interpreters in matters involving Swaziland citizens employed in the Republic of South Africa;
 - (ix) liaise with the Government of the Republic of South Africa on behalf of Swaziland citizens employed in the Republic of South Africa or their dependants in regard to workmen's compensation and pneumoconiosis claims by or on behalf of such citizens;
 - (x) undertake any other function relating to Swaziland citizens in the Republic of South Africa which may by agreement between the two Governments be assigned to the Labour Representative or which are necessarily incidental to the proper discharge of the functions specified in this paragraph.
- (b) In order to discharge their functions, the Labour Representative and his staff shall, by arrangement with the Government of the Republic of South Africa, have reasonable access to employers and places of employment of Swaziland citizens in the Republic of South Africa.

Article IV

- (a) Regarding taxation:
- (i) Swaziland citizens employed in the Republic of South Africa shall be liable to pay taxes levied upon them by the Government of Swaziland and the primary obligation to pay such taxes shall rest upon the citizens concerned;
 - (ii) the Government of the Republic of South Africa shall however endeavour to ensure that employers deduct, at the rate prescribed by the Government of Swaziland, such taxes from wages of their employees who are Swaziland citizens and remit to the Government of Swaziland any amount deducted in terms hereof;
 - (iii) the Government of the Republic of South Africa shall further endeavour to ensure that the employers or such Swaziland citizens give every assistance to Swaziland tax collectors who may from time to time visit such employers to examine the nominal rolls of Swaziland taxpayers, and generally shall endeavour to assist in the collection of taxes from such citizens;
 - (iv) the fact of payment of such taxes shall be endorsed by the Labour Representative or his authorised deputy on the travel document of the citizen concerned.
- (b) Where a contract of employment entered into in terms of the Addendum to this Agreement specifies that there shall be deducted from the wages of a Swaziland citizen employed in the Republic of South Africa—
- (i) deferred pay to be paid to such citizen in Swaziland upon his return thereto; or
 - (ii) allowances to be paid to his family residing in Swaziland; or
 - (iii) money to be paid into a welfare fund which the Government of Swaziland may establish in Swaziland for the purpose of supporting such citizen during periods of his disablement after his return to Swaziland,

the employer of such citizen shall make such deductions at the rate specified in the contract and shall pay to the Government of Swaziland the amounts of money so deducted in such manner and at such intervals not exceeding three months as the last mentioned may request. The Government of the Republic of South Africa shall endeavour to ensure that employers carry out their obligations in this regard.

Article V

- (a) The engagement of Swaziland citizens for employment in the Republic of South Africa shall not be permitted except in accordance with the provisions of the Addendum to this Agreement. The Labour Representative and his staff shall not canvass employers in the Republic of South Africa to introduce Swaziland citizens into the Republic of South Africa.
- (b) The engagement of Swaziland citizens for employment in the Republic of South Africa shall be subject to the availability of South Africa labour and shall be regulated by the Government of the Republic of South Africa accordingly.

Article VI

The Government of Swaziland shall establish suitable facilities at convenient places in Swaziland where Swaziland citizens can apply for employment in the Republic of South Africa and where prospective employers or their authorised representatives can interview, select and engage such citizens and where the necessary processing of contracts and the documentation of recruits as well as their medical examination can be undertaken.

Article VII

Arrangements between the Government of Swaziland on the one hand and any recruiting organisation on the other pertaining to the recruitment of Swaziland citizens in Swaziland for employment in the Republic of South Africa, whether existing or new, shall be subject to the approval of the two respective Governments.

Article VIII

Every person leaving the Kingdom of Swaziland for the purpose of taking up employment in terms of this Agreement shall comply with the laws and regulations governing the admission to, residence in and departure from the Republic of South Africa.

Article IX

- (a) As from the date of the coming into force of this Agreement the arrangements in regard to the introduction of Swaziland citizens into the Republic of South Africa and the movement of labourers across the border between Swaziland and the Republic of South Africa shall be those set out in the Addendum to this Agreement and the arrangements which came into force on 1st July, 1963, in this regard shall lapse.
- (b) Such Addendum shall be deemed to form part of this Agreement.

Article X

- (a) Where the Government of Swaziland or the Government of the Republic of South Africa wishes to make representations to the other on matters arising out of this Agreement or its Addendum, such representations shall be made by an exchange of diplomatic Notes.
- (b) The Government of Swaziland and the Government of the Republic of South Africa may consult directly with each other in regard to the actual implementation of this Agreement and its Addendum and on routine administrative matters arising therefrom.
- (c) The Government of the Republic of South Africa may also specially designate one or more senior Government officials to liaise directly with the Labour Representative or with the Government of Swaziland in regard to such implementation and such administrative matters.

Article XI

- (a) This Agreement shall come into force on the date of signature and shall be valid for an initial period of five years from that date. Thereafter it shall automatically be extended for a period of one year at a time but may be terminated by either Government's giving twelve months' written notice to the other Government of its intention so to do. Such notice shall be given through diplomatic channels.
- (b) Notwithstanding the termination of this Agreement a contract of employment in existence at the date of such termination shall remain of force and run its ordinary course.
- (c) This Agreement may be amended by agreement between the two Governments and any amendment shall be effected by the exchange of diplomatic Notes between them.
- (d) This Agreement or any of its provisions may at any time be suspended by agreement between the two Governments and any such suspension shall be effected by the exchange of diplomatic Notes between them.

Article XII

Notwithstanding the provisions of this Agreement, it is hereby agreed that (a) in the case of emergency, (b) in respect of a visit for a period not exceeding fourteen days, and (c) in regard to certain frontier movements, the position can be dealt with as provided in the Addendum to this Agreement.

IN WITNESS WHEREOF the undersigned being duly authorised thereto by their respective Governments have signed this Agreement.

DONE at Pretoria on this 22nd day of August, 1975, in duplicate in the Afrikaans and English languages, both texts being equally authentic:

Provided that if there is any uncertainty concerning the interpretation of this Agreement, the English text shall prevail.

Addendum

Arrangements regarding passport control posts, the employment and documentation of certain citizens of the Kingdom of Swaziland and movement of certain citizens of Swaziland and of the Republic of South Africa across the common border between the Kingdom of Swaziland and the Republic of South Africa

Article 1

- (1) No person shall enter the Kingdom of Swaziland from the Republic of South Africa or shall enter the Republic of South Africa from the Kingdom of Swaziland, as the case may be, except through any of the Passport Control Posts specified in the Annexure hereto:

Provided that a citizen of the Kingdom of Swaziland or a citizen of the Republic of South Africa who needs to enter the Republic of South Africa or the Kingdom of Swaziland, as the case may be, periodically, may enter at such other place and under such conditions as may be specified in his passport or other travel documents.

Article 2

- (1) No person contracted for employment under the terms of this Agreement shall enter the Republic of South Africa for the purpose of taking up such employment unless—
- (a) he has obtained prior written permission of the Government of the Republic of South Africa;
 - (b) he has in his possession and produces to a Passport Control Officer on the South African side of the border the following documents:
 - (i) A valid passport or other travel document recognised by both Governments;
 - (ii) an international certificate of vaccination against smallpox or such other immunisation certificates as may be prescribed by the Government of the Republic of South Africa;
 - (iii) such other documents as may likewise be prescribed;
 - (iv) a written contract of employment attested in his country of origin in respect of a period of employment not exceeding two years; and
 - (v) a duly completed set of fingerprints taken under the supervision of an official of the Swaziland Government;

Provided that in respect of Swaziland citizens in a case of emergency or in respect of a visit for a period not exceeding fourteen days, the South African Passport Control Officer concerned may at his discretion waive the requirements that prior permission for entry shall be obtained from the Government of the Republic of South Africa.

- (2) The Passport Control Officer concerned shall endorse on the passport or other travel document that the holder thereof is permitted to enter the Republic of South Africa and the conditions and the purpose, place and period of his sojourn.
- (3) In the case of a citizen of Swaziland referred to in the proviso to paragraph (1) of Article 1, the endorsement required in terms of paragraph (2) need be obtained only once in every six months.
- (4) The provisions of paragraph (3) shall apply also in the case of a citizen of South Africa referred to in the proviso to paragraph (1) of Article 1.

Article 3

An employer in the Republic of South Africa, excluding the gold and coal mines represented by the Mines Labour Organisation, the Natal Coal Owners Labour Organisation or the Anglo Collieries Recruiting Organisation, who wishes to introduce a Swaziland citizen into the Republic of South Africa for the purpose of employment, shall—

- (a) be permitted to do so only after he has obtained from the Government of the Republic of South Africa a certificate to the effect that he is permitted to recruit a number of such citizens specified in such certificate;
- (b) possess and produce to a Passport Control Officer, upon his entry into Swaziland for the purpose of recruiting such citizens, a valid passport or other travel document;
- (c) advise the Government of Swaziland at which place such citizens are to be recruited and obtain from that Government permission to engage the citizens concerned;
- (d) pay to the Government of Swaziland a fee which may be prescribed from time to time, and as notified to the Government of the Republic of South Africa;
- (e) enter into such written contract of employment in Swaziland as may be required by any labour law in force in Swaziland.

Article 4

A Swaziland citizen who was in employment authorised by the Government of the Republic of South Africa in a specified area in South Africa, excluding the Western Cape, as at the date of the coming into operation of passport control between the two countries, that is to say 1st July, 1963, shall not in such specified area be subject to the restriction of employment by on particular employer and to the maximum period of employment of two years which apply in respect of engagements entered into after that date:

Provided that this provision shall apply only in the case of Swaziland citizens who are in possession of valid local passports and can adduce proof that they are in such authorised employment, and only where no indigenous worker is available for employment in the place of such citizen.

Article 5

Any citizen of the Kingdom of Swaziland to whom this Agreement relates who is found in the Republic of South Africa and any citizen of the Republic of South Africa who is found in Swaziland, as the case may be, and who is not in possession of a valid passport or other travel documents authorising his presence there, may, after due enquiry has been made from the Labour Representative in the case of a Swaziland citizen, upon his being identified as such a citizen, be liable to be dealt with according to the laws relating to prohibited persons applicable in the country in which he is found and repatriated to the country of his origin and pending such identification and repatriation he may be detained in the country where he was found.

Article 6

A Swaziland citizen who wishes to extend the period of his/her visit to the Republic of South Africa, shall apply to the Government of the Republic of South Africa for such extension.

Annexure
Ports of entry and passport control posts

South Africa	Swaziland
1. Golela.	Lavumisa.
2. Onverwacht.	Ntsalitshe.
3. Mahamba.	Mahamba.
4. Bothasdorp.	Gege.
5. Houdkop.	Sicunusa.
6. Nerston.	Sandlane.
7. Waverley.	Lundzi.
8. Oshoek.	Ngewnya.
9. Josefsdal.	Bulembu.
10. Jeppe's Reef.	Matsamo.
11. Border Gate.	Mananga.