

**No. 50315\***

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**South Africa  
and  
Swaziland**

**Memorandum of Understanding between the Government of the Republic of South Africa and the Government of the Kingdom of Swaziland on cooperation in the field of rail transport. Pretoria, 2 August 2012**

**Entry into force:** *2 August 2012 by signature, in accordance with article 12*

**Authentic text:** *English*

**Registration with the Secretariat of the United Nations:** *South Africa, 11 December 2012*

*\*No UNTS volume number has yet been determined for this record. The Text(s) reproduced below, if attached, are the authentic texts of the agreement /action attachment as submitted for registration and publication to the Secretariat. For ease of reference they were sequentially paginated. Translations, if attached, are not final and are provided for information only.*

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**Afrique du Sud  
et  
Swaziland**

**Mémorandum d'accord entre le Gouvernement de la République sud-africaine et le Gouvernement du Royaume du Swaziland relatif à la coopération dans le champ du transport ferrovier. Pretoria, 2 août 2012**

**Entrée en vigueur :** *2 août 2012 par signature, conformément à l'article 12*

**Texte authentique :** *anglais*

**Enregistrement auprès du Secrétariat des Nations Unies :** *Afrique du Sud, 11 décembre 2012*

*\* Numéro de volume RTNU n'a pas encore été établie pour ce dossier. Les textes reproduits ci-dessous, s'ils sont disponibles, sont les textes authentiques de l'accord/pièce jointe d'action tel que soumises pour l'enregistrement et publication au Secrétariat. Pour référence, ils ont été présentés sous forme de la pagination consécutive. Les traductions, s'ils sont inclus, ne sont pas en form finale et sont fournies uniquement à titre d'information.*

[ ENGLISH TEXT – TEXTE ANGLAIS ]

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE GOVERNMENT OF THE  
REPUBLIC OF SOUTH AFRICA**

**AND**

**THE GOVERNMENT OF THE KINGDOM  
OF SWAZILAND**

**ON**

**COOPERATION**

**IN THE FIELD OF RAIL TRANSPORT**

**Preamble**

**WHEREAS** the Government of the Republic of South Africa and the Government of the Kingdom of Swaziland (hereinafter referred to individually as “Party” and collectively as “Parties”) need to ensure economic stimulation and growth within their respective Countries;

**AND WHEREAS** Transnet Freight Rail(TFR) and Swaziland Railway (SR), (the railways of the respective Parties) are positioned to ensure such economic stimulation and growth through the transportation of freight by rail between their own borders and across borders between the two Countries;

**AND WHEREAS** the Parties have identified an opportunity within their rail infrastructure to ensure growth of freight by rail and thus stimulate the growth of the economies for both countries;

**AND WHEREAS** such an opportunity involves the possibility of the building or construction of a rail line which will link certain existing railway lines in both countries with each other;

**AND WHEREAS** such an opportunity will involve various feasibility studies, research, sourcing of possible funding and other preliminary work;

**AND WHEREAS** the Parties wish to cooperate closely with each other and to enable TFR and SR to conclude the necessary feasibility studies, research, sourcing of possible funding and other preliminary work;

**NOW THEREFORE**, the Parties agree as follows:

**Article 1**

**Competent Authority**

The competent authorities responsible for the implementation of this Memorandum shall be:

- 1.1 in the case of the Kingdom of Swaziland, the Ministry of Public Works & Transport; and
- 1.2 in the case of the Republic of South Africa, the Department of Public Enterprises.

**Article 2**

**Purpose**

The purpose of this Memorandum of Understanding (“Memorandum”) is to record the intention of the Parties and to provide a framework for cooperation between the Parties to enable TFR and SR to undertake all such preliminary work as may be necessary to give effect to the economic cooperation envisaged in this Memorandum.

**Article 3**

**Undertakings**

- 3.1 The Parties undertake to cooperate with each other, according to the terms and conditions set out in this Memorandum in order to ensure that TFR and SR jointly conduct any feasibility studies, research and other preliminary work (including sourcing of possible funding) that need to be carried out in order to determine the viability of constructing a rail link between existing railway lines of the Parties.

- 3.2 Furthermore, the Parties commit themselves to facilitating the fast tracking of the processes of obtaining the government and regulatory approvals necessary for the successful construction of the envisaged rail line including but not limited to the environmental approvals and compliance with legal formalities prescribed by both Governments.

#### **Article 4**

##### **Form of Cooperation**

- 4.1 The primary obligation of the Parties is to provide a conducive environment for TFR and SR to assess the viability of constructing the rail links between the two countries. The Parties in their capacity as shareholder representatives, shall ensure that the TFR and SR are empowered and sufficiently resourced to be able to embark on the envisaged project.
- 4.2 The signatories, in their capacity as cabinet ministers, shall use their best endeavours to ensure that the necessary government approvals and buy-in are sought and obtained expeditiously.
- 4.3 This Memorandum shall be subordinate to any multilateral agreements which may exist or come into force after the commencement of this Memorandum which governs the economic cooperation between the Parties.

#### **Article 5**

##### **Description of Opportunity/Project**

The Project for which the feasibility studies, research and other preliminary work will be required, is the Lothair to Matsapha rail link which will include the possibility of the construction of a new rail line of approximately 155 Kilometres between Lothair and Matsapha, the upgrade of the Phuzamoya to Golela rail line and the upgrade of the Golela to Richards Bay rail line.

**Article 6**

**Funding**

The costs of the preliminary studies and ancillary work shall be borne by TFR and SR in the proportion that will be discussed and agreed between TFR and SR. The Parties undertake to expedite all executive approvals or decisions sought from them by SR or TFR, as the case may be.

**Article 7**

**Implementation and management**

- 7.1 TFR and SR shall be caused or enabled to conclude detailed cooperation agreements which shall regulate their relationship. TFR and SR shall be caused or enabled to jointly prepare a project plan and budget for the feasibility studies and preliminary work and submit such to the Parties.
- 7.2 The Parties shall review progress and receive reports from TFR and SR every two months at a time and date to be determined by the Parties or as often as the Parties may determine from time to time.

**Article 8**

**Liability**

No Party shall be liable to the other party for any loss (including, but not limited to, loss of profit, loss of use, loss of contract, loss of business opportunities) or indirect or consequential damages arising from this Memorandum.

**Article 9**

**Good faith**

The Parties undertake to show and exercise utmost good faith in all dealings with each other. In this regard, the Parties shall procure and promptly supply all information, assistance and access to documentation in their possession, custody or control. Where such information and /or documentation is in possession, custody or control of TFR or SR, either party shall use its best endeavours to procure the information or facilitate access to all the documentation, subject to the confidentiality provisions.

**Article 10**

**Entire Agreement**

This Memorandum constitutes the entire agreement between the Parties with regard to the subject matter of this Memorandum and no Party may rely on any representations which may have induced that Party to enter into this Memorandum, unless such representations are recorded herein.

**Article 11**

**Settlement of Dispute**

Any disputes between the Parties arising out of the interpretation, application or implementation of the Memorandum shall be settled amicably through consultation or negotiations between the Parties.

**Article 12**

**Entry into Force, Duration and Termination**

This Memorandum shall enter into force on the date of signature hereof and shall remain in force unless terminated by either Party by serving upon the other Party a three months' written notice of its intention to terminate this Memorandum through the diplomatic channel.

**Article 13**

**Confidentiality**

The Parties confirm that in the execution of this Memorandum, they will become privy to confidential information regarding each other's business including information relating to their partners and some of their agencies. The Parties therefore, agree to keep such information secret and confidential and not to disclose such information and the contents of this Memorandum to any third party, other than TRF and SR, the Parties' professional advisors, officers and employees and except where such disclosure is required by law.

**Article 14**

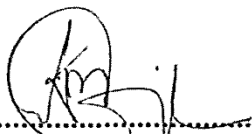
**Amendment**

This Memorandum may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

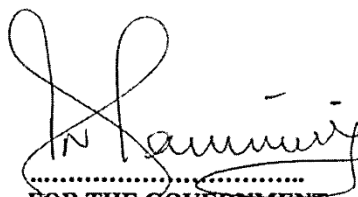


**IN WITNESS WHEREOF**, the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Memorandum in two originals in the English language, both texts being equally authentic.

**DONE AT** PRETORIA.....on this...7<sup>TH</sup>.....day of  
AUGUST..... 2012



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**FOR THE GOVERNMENT OF THE  
REPUBLIC OF SOUTH AFRICA**



.....  
**FOR THE GOVERNMENT  
OF THE KINGDOM OF  
SWAZILAND**