



**MINISTRY OF TOURISM
REPUBLIC OF SOUTH AFRICA**

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Ref.: 1/1/1/1/3

Mr. Maxwell Sisulu, MP
Speaker of the National Assembly
Parliament of the Republic of South Africa
P. O. Box 15
CAPE TOWN
8000



Dear Mr Sisulu

**TABLING OF SEYCHELLES BILATERAL AGREEMENT IN PARLIAMENT IN TERMS OF
CHAPTER 14, SECTION 231(3) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH
AFRICA, 1996 AS AMENDED**

I refer to the afore-mentioned matter.

The Constitution of the Republic of South Africa, 1996 Chapter 14, section 231(3), states that an international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be table in the Assembly and the Council after signing thereof by the relevant Minister for notification purposes.

The Agreement between the Government of the Republic of South Africa and the Government of the Republic of Seychelles on Cooperation in the Field of Tourism was signed on the 05th August 2013. The Agreement focuses on the following tourism matters:

- Promotion of Events;
- Joint Research and Planning;
- Joint Marketing and Promotion Programmes;
- Collaboration between Tourism Associations;
- Product Development and Twinning Arrangements;
- Training and Skills Development Programmes; and
- Tourism Investment Promotion.

The following supporting documents are enclosed for your reference;

- Explanatory Memorandum;
- Copy of the signed Agreement;
- Legal opinion from the Department of Justice and Constitutional Development on Seychelles Agreement; and
- Copy of legal opinion from the Department of International Relations and Cooperation on Seychelles Agreement

I, Mr. Marthinus van Schalkwyk, Minister of Tourism, in compliance with the Constitution of the Republic of South Africa, hereby present to you the copy of the aforementioned Agreement with Seychelles for tabling in the National Assembly.

Kind regards

Marthinus van Schalkwyk

**MARTHINUS VAN SCHALKWYK, MP
MINISTER OF TOURISM**

DATE: 21 / 8 / 13

EXPLANATORY MEMORANDUM

The framework Agreement outlines broad areas of co-operation between the Government of the Republic of South Africa and the Government of the Republic of Seychelles. The Agreement focuses on the following tourism matters: Promotion of Events, Joint Research and Planning, Joint Marketing and Promotion Programmes, Collaboration between Tourism Associations, Product Development and Twinning Arrangements, Training and Skills Development Programmes and Tourism Investment Promotion.

CONSIDERING: The purpose of the Agreement is to strengthen good relations, promote familiarization of historical and cultural heritage and expand co-operation in the field of Tourism on the basis of equality and mutual benefit for the Republic of South Africa and the Republic of Seychelles.

Departments involved are the South African National Department of Tourism and the Ministry of Tourism and Culture of Seychelles.

The agreement was signed on 05 August 2013.

**the doj & cd**

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA
OFFICE OF THE CHIEF STATE LAW ADVISER
Private Bag X81, PRETORIA, 0001, Tel (012) 315 1130, Fax (012) 315 1743, Momentum Centre East Tower 12th Floor,
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Date: 27 March 2013

Mr Kingsley Makhubela
The Director-General
Department of Tourism
Private Bag X424
PRETORIA
0001

Dear Mr Makhubela

For attention: Mr Shavhani Mukwevho: Director: South, East, Central Africa and
Multilateral Organisations

**DRAFT MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE REPUBLIC OF
SEYCHELLES ON COOPERATION IN THE FIELDS OF TOURISM: YOUR UNNUMBERED
MINUTE DATED 19 MARCH 2013**

1. We have scrutinised the draft "Memorandum of Understanding between the Government of the Republic of South Africa and the Government of the Republic of Seychelles on Cooperation in the Fields of Tourism" in terms of paragraph 5.20(a) of the Manual on the Executive Acts of the President of the Republic of South Africa read together with Chapter 5 of the Constitutional Handbook for Members of the Executive, the Constitution of the Republic of South Africa, 1996 ("the Constitution"), and other relevant legislation with a view to possible conflict with the domestic law of the Republic of South Africa and we are of the opinion that since the relevant provisions of Memorandum of Understanding have been made subject to the domestic law of each Party, there is no such conflict.

2. The Parties acknowledge the benefits for promoting and strengthening reciprocal bilateral relations between the two countries and their peoples knowledge and understanding of their respective history cultures and way of life and are desirous of developing and enhancing their cooperation in the field of tourism and the sharing of the values of freedom, democracy, justice and rule of law.

Article 1

3. This Article sets out the objective of this Memorandum of Understanding, which is to provide a broad framework for cooperation in the fields of tourism sector to boost economic growth of both Parties.

Article 2

4. This Article makes provision for the competent authorities who will be responsible for the implementation of this Memorandum of Understanding. In the case of the Republic of South Africa, it will be the National Department of Tourism and, in the case of the Republic of Seychelles, the Department of Tourism and Culture.

Article 3

5. This Article deals with the sharing of expertise in bidding for mutually beneficial promotional events to boost tourism including management and promotion of tourism events.

Article 4

6. This Article deals with the undertaking of Parties to harmonise their respective tourism statistics to be in line with the United Nations World Tourism Organisation guidelines and to organise joint tourism research and planning in their respective countries.

Article 5

7. This Article deals with facilitating the development of joint marketing and promotion campaigns with regard to the promotion of expositions, carnivals, fairs and other events to boost their tourism sectors and the promotion of tourist information and publicity materials, films and exhibition materials subject to the applicable domestic law.

Article 6

8. This Article deals with the establishment of modalities for promoting collaboration between the tourism associations and organisations from both the private and public sectors.

Article 7

9. This Article deals with product development and twinning arrangements which will be achieved by the Parties through twinning their respective tourist attractions and products and through facilitating the development and preservation of their cultural and heritage sites.

Article 8

10. This Article deals with training and skills development programmes which should be established and administered jointly by trainers from each Party in specialised institutions and qualified citizens of each Party will be allowed to train at registered tourism institutions of the other Party as well as the establishment of English, French and Afrikaans language programmes for the mutual benefit of tourism and hospitality sector.

Article 9

11. This Article is concerned with the facilitation of tourism investment promotion in the tourism sectors of the respective countries of the Parties by means of exchanging information on investment opportunities as well as exchange of information and statistics on investment.

Article 10

12. This Article deals with the establishment of a joint Tourism Technical Committee composed of officials from tourism related ministries for effective implementation and monitoring of the agreement and meet bi-annually.

Article 11

13. This Article deals with the amendment of the Agreement which will be amended by mutual consent of the Parties through Exchange of Notes between the Parties through the diplomatic channel.

Article 12

14. This Article deals with the validity and the relationship with international agreements and expressly provides that this Agreement will not in any way affect the validity or execution of any international obligation arising from the applications of other international agreements, conventions, treaties or protocols concluded separately by the Parties.

Article 13

15. This Article deals with any dispute or disagreement that may arise from the interpretation, application or implementation of this Agreement and that any such dispute or disagreement shall be resolved amicably between the Parties through negotiation and consultation through the diplomatic channel.

Articles 14 and 15

16. These Articles deal with the entry into force and duration and termination of this Agreement.

17. The Department's attention is further drawn to section 231 of the Constitution which provides as follows:

"231(1) the negotiation and signing of all agreements is the responsibility of the national executive.

(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection(3).

(3) An international agreement of technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is consistent with the Constitution or an Act of Parliament.

(5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect."

18. The attention of the Department is drawn to the provisions of section 231(2) of the Constitution, according to which, "[a]n international agreement binds the Republic only after

it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3). It would be necessary for Parliament's imprimatur before it could be binding on the Republic of South Africa.

19. The attention of the Department is further drawn to paragraph 5.21 of the Manual on Executive Acts of the President of the Republic of South Africa, in terms of which the Department of International Relations and Cooperation is obliged to confirm whether an international instrument is a "technical, administrative or executive" nature.

We are of the opinion that this Memorandum of Understanding is of a technical, administrative or executive nature.

20. We also assume that the relevant authorities have been consulted regarding the provisions in the Agreement which may have financial implications for the Republic of South Africa.

Yours sincerely,


FOR THE CHIEF STATE LAW ADVISER
MM KHOZA/ E DANIELS



international relations & cooperation

Department:
International Relations and Cooperation
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Mr W van der Westhuizen

MOU BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES ON CO-OPERATION IN THE FIELD OF TOURISM

1. Your request for a legal opinion, dated 22 July 2013, under reference BL1/SYC/3/A26, refers.
2. The text of the draft Memorandum of Understanding (MOU) was scrutinized and subject to our comments and suggestions made hereunder, the aforementioned Memorandum of Understanding this MOU is acceptable from an international law point of view and not in conflict with South Africa's international obligations. We also concur with the comments made by the State Law Advisers at the Department of Justice and Constitutional Development.
3. We have the following comments on the text of the Agreement:
 - a. Ad Preamble

It would be our advice to delete the heading "Preamble". We would further advise that the phrase "jointly referred to as the 'Parties' and separately as a 'Party'" in the first paragraph should be placed in brackets.
 - b. Ad Article 14(2)

We would advise that the reference to Article 15(1) should be amended to refer to Article 15, since Article 15 does not have more than one sub-article.
 - c. Ad Signature clause

Kindly delete the references to "[Name ...]" and "[Post...]". As this is an international agreement that binds the Republic of South Africa, these designations are not relevant.

CONFIDENTIALITY NOTE:

This legal opinion might contain information that is privileged and confidential. If the reader is not the intended recipient, or the employee or agent responsible for delivering the opinion to the intended recipient you are hereby notified that any dissemination, distribution, or copying the documentation is strictly prohibited. If you have received this communication in error, please notify the Office of the Chief State Law Adviser (IL) immediately by telephone, and return the original message to the Office of the Chief State Law Adviser (IL).

4. This MOU falls within the ambit of section 231(3) of the Constitution of the Republic of South Africa, 1996, as a technical/administrative MOU and the President's approval is necessary in order for the MOU to be signed. The President's approval needs to be obtained before the MOU can be signed.
5. In order to obtain Presidential approval, the MOU needs to be certified by this Office. The documentation required for certification consists of -
 - two copies of the President's Minute;
 - two copies of the Explanatory Memorandum setting out the purpose of the MOU and proposed date of signature;
 - two copies of the finally agreed text of the MOU;
 - two copies of the legal opinions from the State Law Advisers at the Department of Justice and Constitutional Development and this Office;
 - completed certification checklist (attached herewith); and
 - all documentation in folder Z137.
6. Once the President has signed the Minute, the MOU cannot be amended in any way.
7. The MOU needs to be bound as soon as the President's approval had been obtained. You are invited to make an appointment for this purpose as soon as you have received the President's Minute with Ms Rika van der Walt, Treaty Section at x10872.
8. The originally signed MOU must be deposited with the Treaty Section for safekeeping immediately after signature.
9. You are reminded that the MOU, once signed, needs to be tabled in Parliament for information purposes within a reasonable time by the responsible line function department.
10. We trust that our comments will be of assistance to you.

TANIA STEENKAMP
STATE LAW ADVISER (IL)

PRETORIA
24 July 2013