

EXPORT CREDIT AND FOREIGN INVESTMENTS INSURANCE ACT 78 OF 1957

(Short title, previously 'Export Credit and Foreign Investments Re-insurance Act', substituted by s. 9 of Act 9 of 2001)

[ASSENTED TO 24 JUNE 1957]

[DATE OF COMMENCEMENT: 12 JULY 1957]

(Afrikaans text signed by the Officer Administering the Government)

as amended by

Export Credit Re-insurance Amendment Act 66 of 1961

Export Credit Re-insurance Amendment Act 88 of 1962

Export Credit Re-insurance Amendment Act 75 of 1971

Export Credit Re-insurance Amendment Act 81 of 1981

Transfer of Powers and Duties of the State President Act 97 of 1986

Export Credit and Foreign Investments Re-insurance Amendment Act 27 of 1988

General Law Amendment Act 49 of 1996

Export Credit and Foreign Investments Re-insurance Amendment Act 9 of 2001

Export Credit and Foreign Investments Insurance Amendment Act 34 of 2002

ACT

To promote trade with countries outside the Republic by providing for the insurance on behalf of the Government of the Republic of contracts in connection with export transactions, investments and loans or similar facilities connected with such transactions; and to provide for matters connected therewith.

[Long title amended by s. 7 (b) of Act 88 of 1962 and substituted by s. 6 of Act 81 of 1981 and by s. 12 of Act 9 of 2001.]

1 Definitions

(1) In this Act, unless the context otherwise indicates-

'**buyer**' means a person carrying on business outside the Republic;

'**contract of insurance**'

[Definition of 'contract of insurance' inserted by s. 1 (1) (a) of Act 75 of 1971 and deleted by s. 1 (a) of Act 9 of 2001.]

'**contract of insurance**'

[Definition of 'contract of insurance', previously definition of 'contract of re-insurance', substituted by s. 1 (b) of Act 9 of 2001 and deleted by s. 1 (a) of Act 34 of 2002.]

'**Corporation**' means the Export Credit Insurance Corporation of South Africa Limited or its lawful successor in title;

[Definition of 'Corporation' inserted by s. 1 (b) of Act 34 of 2002.]

'**Export Credit Agency**'

[Definition of 'Export Credit Agency' inserted by s. 1 (c) of Act 9 of 2001 and deleted by s. 1 (a) of Act 34 of 2002.]

'**Fund**' means the Reserve Fund established under section 5;

[Definition of 'Fund' substituted by s. 1 (a) of Act 81 of 1981 and by s. 1 (d) of Act 9 of 2001.]

'**investment**' means any share or interest in any business undertaking in any country outside the Republic which could promote the exports of the Republic to or the economic development of that country, and which is acquired with the object of earning income;

[Definition of 'investment' inserted by s. 1 (b) of Act 81 of 1981.]

'**Minister**' means the Minister of Trade and Industry;

[Definition of 'Minister' substituted by s. 1 (c) of Act 81 of 1981, by s. 1 of Act 27 of 1988 and by s. 1 (e) of Act 9 of 2001.]

'person' includes any company, association, partnership, individual, government agency or semi-government agency;

'policy of insurance' means a policy of insurance-

- (a) entered into between the Corporation, acting within the general ambit of authority granted in terms of an agreement contemplated in section 2 (1), and a person carrying on business in the Republic; and
- (b) that provides for the insurance on behalf of the Government of a contract subject to risk as contemplated in section 2;

[Definition of 'policy of insurance' inserted by s. 1 (c) of Act 34 of 2002.]

'the Territory'

[Definition of 'the Territory' deleted by s. 1 of Act 49 of 1996.]

'the Republic'

[Definition of 'the Republic' deleted by s. 1 of Act 49 of 1996.]

'this Act' includes any regulation made thereunder;

'trade with countries outside the Republic' includes any transaction (including a transaction for the rendering of a service) involving a consideration in money or money's worth accruing from a person in the course of carrying on business or other activities outside the Republic to a person carrying on business in the Republic and any consignment of goods by a person carrying on business in the Republic to a person carrying on business or other activities outside the Republic with a view to such a transaction.

[Definition of 'trade with countries outside the Republic' amended by s. 1 of Act 66 of 1961.]

(2) For the purposes of this Act-

- (a) a sale of goods to a person who intends to export such goods from the Republic; and
- (b) the sale and consignment of goods (including a transaction for the rendering of a service) from a place or source outside the Republic, if the Minister, in consultation with the Minister of Finance, determines that such sale, consignment or transaction is beneficial for the export trade of the Republic,

shall be deemed to be a transaction in the course of trade with a country outside the Republic in terms of section 2.

[Sub-s. (2) substituted by s. 1 (1) (b) of Act 75 of 1971.]

2 Agreement for insurance

(1) The Minister, in consultation with the Minister of Finance, shall enter into an agreement with the Corporation with the object of insuring on behalf of the Government in terms of policies of insurance any contracts entered into by persons carrying on business in the Republic, being contracts subject to risk of monetary loss or monetary detriment attributable to circumstances beyond the control of the person suffering the loss or detriment and arising out of or in connection with-

- (a) acts or transactions in the course of trade with countries outside the Republic; or
- (b) investments in countries outside the Republic; or

- (c) any loan or similar facility connected with any such act, transaction or investment and granted by a person carrying on business in the Republic to any person,

for any of the following causes-

- (i) the operation of a law, or of an order, a decree or regulation having the force of law, which-
 - (aa) prevents, restricts or controls the transfer of payments from the buyer's country or from the country in which the investment was made, to the Republic; or
 - (bb) prevents, restricts or controls the importation of goods into the buyer's country; or
 - (cc) prevents, restricts or controls the transfer from the country in which the investment was made to the Republic of dividends and interest in respect of the investment;
- (ii) nationalization, expropriation or confiscation;
[Para. (ii) substituted by s. 2 (b) of Act 9 of 2001.]
- (iii) the occurrence of war;
- (iv) the occurrence of hostilities, civil war, rebellion, revolution, insurrection, or other disturbance outside the Republic;
- (ivA) the failure to repay a loan negotiated for purposes of entering into a trading transaction with a person in a country outside the Republic, or to repay a loan negotiated in connection with such transaction; or
- (v) such other causes as the Corporation deems to arise from risks not normally insurable.

[Para. (v) substituted by s. 2 (c) of Act 9 of 2001 and amended by s. 6 (b) of Act 34 of 2002.]

[Sub-s. (1) amended by s. 2 (a) of Act 34 of 2002.]

(2) The Corporation shall be registered as an insurer as contemplated in section 7 (1) (a) of the Short-term Insurance Act, 1998 (Act 53 of 1998), and shall in its capacity as a registered insurer and juristic person be subject to the relevant insurance and company laws.

[Sub-s. (2) added by s. 2 (d) of Act 9 of 2001 and amended by s. 6 (b) of Act 34 of 2002.]

(3) Without detracting in any way from the Minister's power to determine through the agreement contemplated in subsection (1) the manner in which the Corporation shall conduct its business, the Minister may appoint members of the Board and the Chief Executive Officer of the Corporation.

[Sub-s. (3) added by s. 2 (d) of Act 9 of 2001 and substituted by s. 2 (b) of Act 34 of 2002.]

(4) The members and Chief Executive Officer contemplated in subsection (3) shall be suitably qualified to perform the functions of the Corporation.

[Sub-s. (4) added by s. 2 (d) of Act 9 of 2001 and amended by s. 6 (b) of Act 34 of 2002.]

[S. 2 amended by s. 2 of Act 66 of 1961 and by s. 1 of Act 88 of 1962, substituted by s. 2 of Act 81 of 1981 and amended by s. 2 of Act 2 of 1988 and by ss. 2 (a) and 10 of Act 9 of 2001.]

3 Percentage cover

The maximum sum insured in terms of any policy of insurance in the case of any

act, transaction or investment contemplated in section 2 (1) (a) and (b) shall not exceed 90 per cent of the total value of the contract or the investment in question, as the case may be.

[S. 3 amended by s. 2 of Act 88 of 1962 and substituted by s. 3 of Act 9 of 2001 and by s. 3 of Act 34 of 2002.]

4 Premiums

The rate of premium for any policy of insurance shall be fixed by the Corporation, having regard to the various factors which have a bearing on the risks covered by the policy and to the cost of administering this Act.

[S. 4 substituted by s. 4 of Act 9 of 2001 and by s. 4 of Act 34 of 2002.]

5 Financial arrangements

(1) The Corporation shall establish a Reserve Fund into which shall be paid moneys appropriated by Parliament for the purpose of this Act and premiums and other moneys accruing to the Corporation under contracts of insurance.

[Sub-s. (1) substituted by s. 3 (a) of Act 81 of 1981, by s. 3 (a) of Act 27 of 1988 and by s. 5 (a) of Act 9 of 2001 and amended by s. 6 (b) of Act 34 of 2002.]

(2) There shall be paid out of the Fund:

(a) all moneys required for the discharge of claims or other liabilities under contracts of insurance;

[Para. (a) amended by s. 10 of Act 9 of 2001.]

(b) any remuneration and allowances referred to in sections 7 and 8;

[Para. (b) substituted by s. 5 (b) of Act 9 of 2001.]

(c) such other costs of administering this Act as may be determined by the Minister in consultation with the Corporation.

[Para. (c) substituted by s. 5 (b) of Act 9 of 2001 and amended by s. 6 (b) of Act 34 of 2002.]

(3) The Corporation shall from time to time determine the amount in the Fund which shall be kept available for the payment of any claims, liabilities, fees and costs referred to in subsection (2), and the balance of the moneys in the Fund over and above the amount so determined shall be suitably invested by the Corporation in accordance with the requirements of the Short-term Insurance Act, 1998 (Act 53 of 1998).

[Sub-s. (3) substituted by s. 3 (b) of Act 81 of 1981, by s. 3 (b) of Act 27 of 1988 and by s. 5 (c) of Act 9 of 2001 and amended by s. 6 (b) of Act 34 of 2002.]

(4) (a) The Corporation may from time to time obtain advances from the Minister in order to meet temporary deficits in the Fund.

[Para. (a) substituted by s. 5 (d) of Act 9 of 2001 and amended by s. 6 (b) of Act 34 of 2002.]

(b) Any loss incurred by the Minister as a result of such advances shall be met out of moneys appropriated by Parliament for this purpose.

[Para. (b) substituted by s. 5 (d) of Act 9 of 2001.]

(c) and (d)

[Paras. (c) and (d) deleted by s. 5 (e) of Act 9 of 2001.]

[Sub-s. (4) added by s. 3 of Act 88 of 1962.]

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[S. 6 repealed by s. 6 of Act 9 of 2001.]

7 Establishment of committees

(1) The Corporation shall establish, in consultation with the Minister, a committee which shall evaluate applications for contracts of insurance.

[Sub-s. (1) substituted by s. 7 of Act 9 of 2001 and amended by s. 6 (b) of Act 34 of 2002.]

(2) (a) The members of any committee established under subsection (1) shall be appointed at such remuneration and allowances and on such conditions as may be determined by the Minister in consultation with the Minister of Finance, and the said remuneration and allowances shall be paid out of the Fund.

(b) A member of any committee referred to in subsection (1), who is in the full-time employment of the State, shall not receive any remuneration in respect of his or her services as such a member, and any travelling or subsistence allowance paid to such a member shall be in accordance with the laws governing his or her employment by the State.

[Para. (b) amended by s. 6 (c) of Act 34 of 2002.]

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[S. 8 amended by s. 10 of Act 9 of 2001 and repealed by s. 5 of Act 34 of 2002.]

9 Delegation of powers of Minister

Any power which may be exercised under this Act by the Minister alone, may be exercised by any officer in the Department of Trade and Industry deputed thereto by the Minister; and any power which may be exercised under this Act by the Minister in consultation with the Minister of Finance, may be exercised by any officer in the Department of Trade and Industry in consultation with an officer in the Department of Finance respectively deputed thereto by the Minister and the Minister of Finance.

[S. 9 substituted by s. 4 of Act 81 of 1981 and by s. 4 of Act 27 of 1988.]

10 Offences and penalties

(1) Any person who wilfully makes a false or misleading statement in or in connection with a policy of insurance shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

[Sub-s. (1) substituted by s. 8 of Act 9 of 2001 and amended by s. 6 (a) of Act 34 of 2002.]

(2) Whenever any person is convicted of an offence under this Act, he or she shall forfeit all rights under the policy of insurance in respect of which such offence was committed and the court so convicting him or her may summarily enquire into and assess the monetary equivalent of any advantage which he or she may have gained in consequence of that offence, and may, in addition to any other penalty imposed in respect of that offence, impose upon him or her a fine equal to the amount so assessed and, in default of payment thereof, imprisonment for a period not exceeding six months.

[Sub-s. (2) amended by s. 6 (a) and (c) of Act 34 of 2002.]

(3) A magistrate's court shall have jurisdiction to impose such additional penalty as is contemplated in subsection (2), even though such penalty may, either alone or together with any other penalty imposed by that court, exceed the punitive jurisdiction of a magistrate's court.

11 Regulations

The Minister may make any regulations which are not inconsistent with this Act and which he or she considers necessary or expedient for the achievement of the purposes

and objects of this Act.

[S. 11 amended by s. 4 of Act 88 of 1962, by s. 46 of Act 97 of 1986 and by s. 6 (c) of Act 34 of 2002.]

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[S. 12 amended by s. 5 of Act 88 of 1962 and repealed by s. 1 of Act 49 of 1996.]

13 **Short title**

This Act shall be called the Export Credit and Foreign Investments Insurance Act, 1957.

[S. 13 substituted by s. 5 of Act 81 of 1981.]