

PROTECTION OF BUSINESSES ACT 99 OF 1978

[ASSENTED TO 20 JUNE 1978]

[DATE OF COMMENCEMENT: 4 AUGUST 1978]

(English text signed by the State President)

as amended by

Protection of Businesses Amendment Act 114 of 1979
Protection of Businesses Amendment Act 71 of 1984
Protection of Businesses Amendment Act 87 of 1987
International Co-operation in Criminal Matters Act 75 of 1996

ACT

To restrict the enforcement in the Republic of certain foreign judgments, orders, directions, arbitration awards and letters of request; to prohibit the furnishing of information relating to businesses in compliance with foreign orders, directions or letters of request; and to provide for matters connected therewith.

1 Prohibition of enforcement of certain foreign judgments, orders, directions, arbitration awards and letters of request and furnishing of information relating to businesses in compliance with foreign orders, directions or letters of request

(1) Notwithstanding anything to the contrary contained in any law or other legal rule, and except with the permission of the Minister of Economic Affairs-

- (a) no judgement, order, direction, arbitration award, interrogatory, commission rogatoire, letters of request or any other request delivered, given or issued or emanating from outside the Republic in connection with any civil proceedings and arising from any act or transaction contemplated in subsection (3), shall be enforced in the Republic;
- (b) no person shall in compliance with or in response to any order, direction, interrogatory, commission rogatoire, letters of request or any other request issued or emanating from outside the Republic in connection with any civil proceedings, furnish any information as to any business whether carried on in or outside the Republic.

[Sub-s. (1) amended by s. 1 of Act 87 of 1987 and substituted by s. 36 of Act 75 of 1996.]

(2) The permission contemplated in subsection (1) (b) may-

- (a) be granted either by notice in the *Gazette* or by written authority addressed to a particular person;
- (b) be granted subject to such conditions as the said Minister may deem fit;
- (c) relate only to specified goods or businesses or classes of goods or businesses, or to orders, directions, interrogatories, commissions rogatoire, letters of request or any other request issued in or emanating from a specified country;

[Para. (c) substituted by s. 1 (c) of Act 87 of 1987.]

- (d) if it is granted by notice in the *Gazette*, relate only to specified persons or classes of persons.

(3) In the application of subsection (1) (a) an act or transaction shall be an act or transaction which took place at any time, whether before or after the commencement of this Act, and is connected with the mining, production, importation, exportation, refinement, possession, use or sale of or ownership to any matter or material, of whatever nature, whether within, outside, into or from the Republic.

[Sub-s. (3) substituted by s. 1 of Act 114 of 1979 and by s. 1 (d) of Act 87 of 1987.]

1A Prohibition of recognition or enforcement of certain judgments

(1) No judgment delivered by a court outside the Republic, arising from any act or transaction referred to in section 1 (3) and directing the payment of multiple or punitive damages shall be recognized or enforced in the Republic, irrespective of whether or not the Minister has in terms of section 1 granted his consent as contemplated in that section.

(2) In this section and in section 1B 'multiple or punitive damages' means that part of the amount awarded as damages which exceeds the amount determined by the court as compensation for the damage or loss actually sustained by the person to whom the damages have been awarded.

[S. 1A inserted by s. 1 of Act 71 of 1984.]

1B Recovery of certain amounts paid by way of multiple or punitive damages

(1) (a) A qualifying defendant against whom a judgment for multiple or punitive damages has been delivered by a court outside the Republic, whether before or after the commencement of the Protection of Business Amendment Act, 1984, and who in compliance with that judgment has paid an amount to the person in whose favour the judgment has been delivered or to another person as against whom the qualifying defendant is liable to make a contribution in respect of such damages, may recover from the person in whose favour the judgment was delivered so much of the amount paid as exceeds the part attributable to compensation for damage or loss actually sustained.

(b) The 'part' referred to in paragraph (a) shall be deemed to be that part of the amount paid which bears to the whole of it the same proportion as the amount assessed by the court which delivered the judgment as compensation for damage or loss actually sustained bears to the whole of the damages awarded.

(2) This section shall not apply-

- (a) if the qualifying defendant at the material time carried on business outside the Republic and the proceedings in respect of which the judgment was given related to activities exclusively carried on outside the Republic in connection with that business; or
- (b) if the qualifying defendant was at the material time ordinarily resident outside the Republic or, in the case of a juristic person, had at that time its principal place of business outside the Republic.

(3) In the application of subsection (1) an amount obtained by execution against the property of the qualifying defendant, or against the property of any company the interests of which are according to a judgment referred to in that subsection integrated with the interests of the qualifying defendant to an extent which requires that an act or omission of that company be regarded in law as an act or omission of the qualifying defendant also, shall be deemed to be an amount paid by the qualifying defendant, and in such application any person upon whom devolved, by succession or otherwise, the rights of the person in whose favour the judgment was delivered or of any person who is entitled to a contribution in respect of such damages, shall be deemed to be the person in whose favour the judgment was delivered or, as the case may be, the person who is entitled to such contribution.

(4) Where the person in whose favour a judgment for multiple or punitive damages was delivered is a company, any other company which is the controlling company or a controlled company of the first-mentioned company or is a company which is controlled by the same controlling company as controls the first-mentioned company,

shall be liable, jointly and severally, together with the first-mentioned company, in respect of any liability imposed upon the first-mentioned company as contemplated in subsection (1).

(5) In this section, unless the context otherwise indicates-

'controlled company' means a controlled company as defined in section 1 of the Companies Act, 1973 (Act 61 of 1973), and 'control' has a corresponding meaning;

'controlling company' means a controlling company as defined in section 1 of the Companies Act, 1973;

'material time' means the time when the proceedings were instituted pursuant to which a judgment for multiple or punitive damages was delivered;

'qualifying defendant' means-

- (a) a natural person who at the material time was domiciled or ordinarily resident in the Republic; or
- (b) a juristic person who at the material time was incorporated in the Republic; or
- (c) any person who at the material time carried on business in the Republic.

[S. 1B inserted by s. 1 of Act 71 of 1984.]

1C Saving

The provisions of section 1A shall not derogate from-

- (a) the provisions of section 1;
- (b) the power of the defendant to avail himself of any defence which he may by law raise in any action for the recognition or enforcement of a judgment of a court outside the Republic.

[S. 1C inserted by s. 1 of Act 71 of 1984.]

1D Prohibition of recognition or enforcement of certain judgments, orders, directions, arbitration awards, interrogatories, commissions rogatoire, letters of request or other requests

No judgment, order, direction, arbitration award, interrogatory, commission rogatoire, letters of request or any other request delivered, given or issued outside the Republic or emanating from outside the Republic and which arises from any act or transaction referred to in subsection (3) of section 1 shall be recognized or enforced in the Republic, irrespective of whether or not the Minister has given his consent in terms of that section, if such judgment, order, direction, arbitration award, interrogatory, commission rogatoire, letters of request or other request is connected with any liability which arises from any bodily injury of any person resulting directly or indirectly from the consumption or use of or exposure to any natural resource of the Republic, whether unprocessed or partially processed or wholly processed, or any product containing or processed from any such natural resource, unless the same liability would have arisen under the law of the Republic, as it existed at the time of the occurrence of the event which gave rise to the liability.

[S. 1D inserted by s. 2 of Act 87 of 1987.]

1E Conduct of person against whom judgment was delivered in foreign country which shall not be regarded as submission by such person to jurisdiction of such court, and circumstances relating to such person which shall not be regarded as having conferred jurisdiction on such court

(1) For the purposes of determining the question whether or not a judgment

delivered by a court in a foreign country relating to any act or transaction referred to in section 1 (3) can be recognized or enforced in the Republic-

- (a) the person against whom the judgment was given shall not be regarded as having submitted to the jurisdiction of that court by reason only of the fact that he appeared, whether conditionally or otherwise, in the proceedings in question or of the fact that he took any steps in connection with such proceedings for the following purposes, or any one or more of them, namely-
 - (i) to contest the jurisdiction of that court;
 - (ii) to apply for the dismissal of the action in question or for the setting aside of the writ or summons in those proceedings on the ground that the court did not have the required jurisdiction;
 - (iii) to protect or to obtain the release of any property attached for the purpose of such proceedings, or threatened with attachment in those proceedings;
 - (iv) to apply to the court not to exercise its jurisdiction, if it was a case where that court had a discretion to decide whether or not to exercise its jurisdiction;
 - (v) to apply to such court for the dismissal of, or a stay of, the proceedings on the ground that the matter should be referred to arbitration or to a court in another country for a decision;
 - (vi) to institute review proceedings in connection with, or to lodge an appeal against, any order made in the proceedings mentioned in paragraphs (i) to (v);
- (b) it shall not be regarded that such court had jurisdiction in respect of the person against whom such judgment was given merely on the ground of the fact that such person did business within the area of that court, unless such person, at the time when the events occurred which gave rise to the relevant proceedings, conducted a permanent business establishment within that area.

(2) Where the person against whom judgment was delivered by a court in a foreign country in respect of any act or transaction referred to in section 1 (3), entered appearance in the proceedings in which such judgment was given in order to defend the action on the merits thereof or took any other step in such proceedings in order to defend the action on the merits thereof, such entry of appearance and such step shall not be regarded as a submission to the jurisdiction of the court if in terms of the law governing such court and the proceedings conducted therein, such person was not entitled to contest the jurisdiction of the court unless he entered such appearance or took such step, as the case may be, in order to defend the action on the merits thereof.

[S. 1E inserted by s. 3 of Act 87 of 1987.]

1F Foreign judgment to constitute *res judicata*

It shall be a defence to any action brought in any court in the Republic if it is proved to the satisfaction of such court that the cause of action founding the action so brought was the subject of a judgment given by a court in a foreign country, if-

- (a) in terms of the laws of the foreign country the court which gave such judgment was competent to give that judgment;

- (b) in terms of such laws such judgment is final and conclusive; and
- (c) the parties to the proceedings in which such judgment was given, or their successors in title, are the same as the parties to the proceedings in the Republic.

[S. 1F inserted by s. 4 of Act 87 of 1987.]

1G Application of sections 1D, 1E and 1F

The provisions of sections 1D, 1E and 1F shall apply in respect of any judgment, order, direction, arbitration award, interrogatory, commission rogatoire, letters of request or other request, as the case may be, irrespective of whether it was or is delivered, given or issued before or after the commencement of the Protection of Businesses Amendment Act, 1987.

[S. 1G inserted by s. 5 of Act 87 of 1987.]

2 Offences and penalties

Any person who contravenes the provisions of section 1 (1) (b) shall be guilty of an offence and on conviction liable to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

3 Repeals section 2 of the Second General Law Amendment Act 94 of 1974.

4 Short title and commencement

This Act shall be called the Protection of Businesses Act, 1978, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.