



Republic of Namibia
Annotated Statutes

Conventional Penalties Act 15 of 1962 (RSA)

(RSA GG 202)

came into force in South Africa and South West Africa

on date of publication: 16 March 1962

(see section 6 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 6 of the Act states "This Act shall apply also in the territory of South West Africa." This wording does not seem to make South African amendments to the Act automatically applicable to South West Africa. However, the only amendment to the Act in South Africa prior to Namibian independence is contained in section 18(1) of the *General Law Amendment Act 102 of 1967*, and it is made expressly applicable to South West Africa by section 18(2) of that Act.

TRANSFER TO SOUTH WEST AFRICA: Although this Act makes no reference to any minister, by virtue of its subject matter it probably fell under the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. Support for this assumption can be found in the fact that this Act is one of the laws listed in the *Justice Laws Rationalisation Act 18 of 1996 (RSA)* (RSA GG 17129). In any event, there were no amendments to the Act in South Africa after the date of transfer and prior to Namibian independence.

as amended by

General Law Amendment Act 102 of 1967 (RSA) (RSA GG 1771)

came into force on date of publication: 21 June 1967

ACT

To provide for the enforceability of penalty stipulations, including stipulations based on pre-estimates of damage, and of forfeiture clauses.

(English text signed by the State President)

(Assented to 5th March, 1962)

ARRANGEMENT OF SECTIONS

1. Stipulations for penalties in case of breach of contract to be enforceable
2. Prohibition on cumulation of remedies and limitation on recovery of penalties in respect of defects or delay
3. Reduction of excessive penalty

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4. Provisions as to penalty stipulations also apply in respect of forfeiture stipulations
5. Application of Act to agreements to which Act 36 of 1942 or Ordinance 7 of 1942 of South-West Africa applies
6. Application in South-West Africa
7. Short title

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

Stipulations for penalties in case of breach of contract to be enforceable

1. (1) A stipulation, hereinafter referred to as a penalty stipulation, whereby it is provided that any person shall, in respect of an act or omission in conflict with a contractual obligation, be liable to pay a sum of money or to deliver or perform anything for the benefit of any other person, hereinafter referred to as a creditor, either by way of a penalty or as liquidated damages, shall, subject to the provisions of this Act, be capable of being enforced in any competent court.

(2) Any sum of money for the payment of which or anything for the delivery or performance of which a person may so become liable, is in this Act referred to as a penalty.

Prohibition on cumulation of remedies and limitation on recovery of penalties in respect of defects or delay

2. (1) A creditor shall not be entitled to recover in respect of an act or omission which is the subject of a penalty stipulation, both the penalty and damages, or, except where the relevant contract expressly so provides, to recover damages in lieu of the penalty.

(2) A person who accepts or is obliged to accept defective or non-timeous performance shall not be entitled to recover a penalty in respect of the defect or delay, unless the penalty was expressly stipulated for in respect of that defect or delay.

Reduction of excessive penalty

3. If upon the hearing of a claim for a penalty, it appears to the court that such penalty is out of proportion to the prejudice suffered by the creditor by reason of the act or omission in respect of which the penalty was stipulated, the court may reduce the penalty to such extent as it may consider equitable in the circumstances: Provided that in determining the extent of such prejudice the court shall take into consideration not only the creditor's proprietary interest, but every other rightful interest which may be affected by the act or omission in question.

Provisions as to penalty stipulations also apply in respect of forfeiture stipulations

4. A stipulation whereby it is provided that upon withdrawal from an agreement by a party thereto under circumstances specified therein, any other party thereto shall forfeit the right to claim restitution of anything performed by him in terms of the agreement, or shall, notwithstanding the withdrawal, remain liable for the performance of anything thereunder, shall have effect to the extent and subject to the conditions prescribed in sections *one* to *three*, inclusive, as if it were a penalty stipulation.

Application of Act to agreements to which Act 36 of 1942 or Ordinance 7 of 1942 of South-West Africa applies

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5. (1) If any provision of the Hire-Purchase Act, 1942, or of the Hire-Purchase Ordinance, 1942, of the territory of South-West Africa is, in terms of the said Act or Ordinance or any notice issued under the said Act or Ordinance, applicable to any agreement, the provisions of this Act shall not apply to such agreement in so far as they are in conflict with the provision in question.

[The Hire-Purchase Act 36 of 1942 (RSA) was applied to South West Africa by the Hire-Purchase Amendment Act 79 of 1970 (RSA), which repealed the Hire-Purchase Ordinance 7 of 1942 (SWA). The Credit Agreements Act 75 of 1980 (RSA) has replaced the Hire-Purchase Act 36 of 1942 (RSA).]

(2) Subsection (1) shall apply also in the territory of South-West Africa.

[section 5 substituted by Act 102 of 1967]

Application in South-West Africa

6. This Act shall apply also in the territory of South-West Africa.

Short title

7. This Act shall be called the Conventional Penalties Act, 1962.