



Republic of Namibia
Annotated Statutes

Export Credit and Foreign Investments Re-insurance Act 78 of 1957 (SA)

(SA GG 5908)

came into force in South Africa and South West Africa
on date of publication: 12 July 1957
(see section 12 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 1 defines “Republic” to include “the Territory”, which is defined as “the Territory of South West Africa and includes for all purposes the portion of the Territory known as the ‘Rehoboth Gebiet’ and defined in the First Schedule to Proclamation No. 28 of 1923”. Section 12 originally stated “This Act shall apply also in the Territory.” Section 12 (as amended by Act 88 of 1962) states “This Act and any amendment thereof, whensoever enacted, shall apply also in the Territory.”

TRANSFER TO SOUTH WEST AFRICA: The relevant Transfer Proclamation is the Executive Powers (Commerce) Transfer Proclamation, AG 28 of 1978, dated 28 April 1978. However, section 3(1)(d) of the transfer proclamation excluded this Act from the operation of section 3(1) of Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of the Act was not transferred to South West Africa. Thus, amendments to the Act in South Africa continued to apply to South West Africa by virtue of the wording of section 12.

as amended by

Export Credit Re-insurance Amendment Act 66 of 1961 (RSA) (RSA GG 31)
deemed to have come into force on 12 July 1957 (section 3 of Act 66 of 1961)

Export Credit Re-insurance Amendment Act 88 of 1962 (RSA) (RSA GG 284)
came into force on date of publication: 4 July 1962

Export Credit Re-insurance Amendment Act 75 of 1971 (RSA) (RSA GG 3186)
came into force on date of publication: 7 July 1971

Export Credit Re-insurance Amendment Act 81 of 1981 (RSA) (RSA GG 7841)
came into force on date of publication: 21 October 1981

**Transfer of Powers and Duties of the State
President Act 97 of 1986 (RSA)** (RSA GG 10438)
brought into force on 3 October 1986 by RSA Proc. 185/1986 (RSA GG 10475)

**Export Credit and Foreign Investments Re-insurance
Amendment Act 27 of 1988 (RSA)** (RSA GG 11217)
came into force on date of publication: 30 March 1988

ACT

Export Credit and Foreign Investments Re-insurance Act 78 of 1957 (SA)

To promote trade with countries outside the Republic by providing for the re-insurance with the Government of the Republic of insurance contracts in connection with export transactions, investments and loans or similar facilities connected with such transactions.

[long title amended by Act 88 of 1962 and by Act 81 of 1981]

*(Afrikaans text signed by the Officer Administering the Government)
(Assented to 24th June, 1957)*

ARRANGEMENT OF SECTIONS

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BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:-

[Act 88 of 1962 amends the Act throughout to substitute "Republic" for "Union".]

Definitions

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

“buyer” means a person carrying on business outside the Republic;

“contract of insurance” includes any amendment to a contract of insurance referred to in section 2 if such amendment has at any time before or after it was made, been approved by the Minister in consultation with the Minister of Finance;

[definition of “contract of insurance” inserted by Act 75 of 1971]

“contract of re-insurance” means a contract of re-insurance entered into in terms of an agreement referred to in section *two*;

“Fund” means the Re-insurance Fund for Export Credit and Foreign Investments established under section 5;

**[definition of “Fund” amended by Act 81 of 1981;
not all of the changes are indicated by amendment markings]**

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“investment” means an share or interest in an 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 Act 81 of 1981]

“Minister” means the Minister of Economic Affairs and Technology;

[definition of “Minister” amended by Act 81 of 1981 and by Act 27 of 1988]

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

“the Territory” means the territory of South-West Africa and includes for all purposes the portion of the Territory known as the “Rehoboth Gebiet” and defined in the First Schedule to Proclamation by the Administrator of the Territory No. 28 of 1923;

“the Republic” includes the Territory;

“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 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.

[subsection (2) substituted by Act 75 of 1971]

Agreement for re-insurance

2. The Minister may enter into an agreement with any person who is a registered insurer as defined in section 1 of the Insurance Act, 1943 (Act No. 27 of 1943), with the object of re-insuring, against the payment of a premium and on such other terms and conditions as may, in consultation with the Minister of Finance, be prescribed in such agreement, any contracts of insurance entered into by such person with, or for the benefit of, persons carrying on business in the Republic, being contracts of insurance against risk of monetary loss or monetary detriment attributable to circumstances beyond control of the person suffering the loss or detriment and arising out of or in connection with -

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- (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 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) expropriation or confiscation;
- (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 Minister may in consultation with the Minister of Finance deem to arise from risks not normally insurable.

[section 2 amended by Act 66 of 1961, Act 88 of 1962, Act 81 of 1981 and Act 27 of 1988; not all of the changes made by Act 81 of 1981 are indicated by amendment markings]

Percentage cover

3. A contract of re-insurance shall specify the maximum percentage of the loss, as defined in such contract, which is covered by the indemnity under such contract, and such percentage shall not exceed ninety *per centum* of the loss as so defined: Provided that the Minister in consultation with the Minister of Finance may in any particular case approve of a higher percentage.

[The proviso is inserted by Act 88 of 1962. A colon has been inserted accordingly.]

Premiums

4. The rate of premium for any contract of re-insurance shall be fixed by the Minister in consultation with the Minister of Finance, having regard to the various factors which have a bearing on the risks covered by the contract and to the cost of administering this Act.

Export Credit and Foreign Investments Re-insurance Act 78 of 1957 (SA)**Financial arrangements**

5. (1) The Minister shall establish a Fund, to be known as the Re-insurance Fund for Export Credit and Foreign Investments, under the control of the Director-General: Trade and Industry, into which shall be paid moneys appropriated by Parliament for the purposes of this Act and premiums and other moneys accruing to the Minister under contracts of re-insurance.

[subsection (1) amended by Act 81 of 1981 and by Act 27 of 1988]

- (2) There shall be paid out of the Fund:
- (a) all moneys required for the discharge of claims or other liabilities under contracts of re-insurance;
 - (b) any fees referred to in section *six* and any remuneration and allowances referred to in sections *seven* and *eight*;
 - (c) such other costs of administering this Act as may be determined by the Minister in consultation with the Minister of Finance.

(3) The Minister, in consultation with the Minister of Finance, 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 in subsection (2), and the balance of the moneys in the Fund over and above the amount so determined shall be deemed to be deposits for the purposes of the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984), and shall be dealt with accordingly.

[subsection (3) amended by Act 81 of 1981 and by Act 27 of 1988;
not all of the changes made by Act 27 of 1988 are indicated by amendment markings]

- (4) (a) Subject to the provisions of sub-section (3), the moneys of the Fund shall be kept in an account with the South African Reserve Bank.
- (b) The Minister may from time to time obtain advances from the said Bank in order to meet temporary deficits in the Fund.
- (c) The total amount of any such advances which have not yet been repaid shall at no time exceed an amount to be specified in a guarantee to be given to the said Bank by the Minister of Finance.
- (d) Any loss incurred by the said Bank as a result of such advances shall be met out of moneys appropriated by Parliament for the purpose.

[subsection (4) inserted by Act 88 of 1962]

Membership of organizations

6. The Minister may in consultation with the Minister of Finance arrange for the Republic to become a member of any organization membership of which may promote the operation or purposes of this Act, and any fees payable to secure or to retain such membership shall be defrayed out of the Fund.

Establishment of committees

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7. (1) The Minister shall establish an advisory committee, and such other committee or committees as he may deem necessary, to advise him on any matter in connection with the administration and operation of this Act.

(2) (a) The members of any committee established under sub-section (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 sub-section (1), who is in the full-time employment of the State, shall not receive any remuneration in respect of his 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 employment by the State.

Administration of Act

8. (1) Subject to the provisions of section *seven*, the Minister shall administer this Act through officers appointed in accordance with the laws regulating the public service: Provided that the Minister may enter into an agreement with any other person whereunder that person undertakes to perform any work arising from this Act or from any re-insurance effected under this Act.

(2) The Minister may in consultation with the Minister of Finance determine the remuneration and allowances to be paid to such other person engaged in terms of the proviso to sub-section (1) in respect of his services, and the said remuneration and allowances shall be paid out of the Fund.

Delegation of powers of Minister

9. 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.

[section 9 amended by Act 81 of 1981 and by Act 27 of 1988]

Offences and penalties

10. (1) Any person who wilfully makes a false or misleading statement in or in connection with a contract of insurance which forms the subject of a contract of re-insurance, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred pounds or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

[A fine not exceeding two hundred pounds is equivalent to a fine not exceeding N\$400.]

(2) Whenever any person is convicted of an offence under this Act, he shall forfeit all rights under the contract of insurance in respect of which such offence was committed and the court so convicting him may summarily enquire into and assess the monetary equivalent of any advantage which he 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 a fine equal to the

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amount so assessed and, in default of payment thereof, imprisonment for a period not exceeding six months.

(3) A magistrate's court shall have jurisdiction to impose such additional penalty as is contemplated in sub-section (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.

Regulations

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

[section 11 amended by Act 88 of 1962 and by Act 97 of 1986]

Application to South-West Africa

12. This Act and any amendment thereof, whensoever enacted, shall apply also in the Territory.

[section 12 amended by Act 88 of 1962]

Short title

13. This Act shall be called the Export Credit and Foreign Investments Re-insurance Act, 1957.

[Section 13 is amended by Act 81 of 1981, which also corrects a misnumbering of the section as "19" in the original *Government Gazette*. The amendment markings are incorrect.]

[Section 1(2) of Act 75 of 1971 provides the following transitional provision:

"If, with the approval of the Minister of Economic Affairs given in consultation with the Minister of Finance, any amendment was, before the commencement of the Export Credit Re-insurance Amendment Act, 1971 [Act 75 of 1971], made with retrospective effect to any contract of insurance which had been re-insured under the principal Act, such amendment shall be deemed to have been included in such contract of insurance and any payment made pursuant to such amendment out of the Fund referred to in section 5 of the principal Act [Act 78 of 1957] shall be deemed to have been lawfully made."