



Republic of Namibia
Annotated Statutes

Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 (RSA)

(RSA GG 5504)

came into force in South Africa and South West Africa
on date of publication: 13 April 1977
(see definition of “court” in section 1)

APPLICABILITY TO SOUTH WEST AFRICA: Although the Act does not contain a specific provision making it applicable to South West Africa, “court” is defined in section 1 of the Act as “...a court of a provincial division or local division of the Supreme Court of South Africa”. As of 1977, the South African Supreme Court Act 59 of 1959 defined “provincial division” to include “the Eastern Cape division and the South West Africa division”. Furthermore, the First Schedule to the Supreme Court Act 59 of 1959 contained a description of the various provincial and local divisions of the Supreme Court of South Africa and their areas of jurisdiction which, in 1977, included a description of the “South-West Africa Division of the Supreme Court of South Africa”.

TRANSFER TO SOUTH WEST AFRICA: Although this Act makes no reference to any minister, because of its subject matter it probably fell under the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

ACT

To provide for the recognition and enforcement of foreign arbitral awards and for matters connected therewith.

*(English text signed by the State President)
(Assented to 25 March 1977)*

ARRANGEMENT OF SECTIONS

1. Definitions
2. Foreign arbitral award may be made order of court and enforced as such
3. Application for award to be made order of court
4. When order of court may be refused
5. Short title

Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 (RSA)

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

Definitions

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

“certified copy” means a copy authenticated in the manner in which foreign documents may be authenticated to enable them to be produced in any court;

“court” means a court of a provincial or local division of the Supreme Court of South Africa;

“foreign arbitral award” means an arbitral award -

- (a) made outside the Republic; or
- (b) the enforcement of which is not permissible in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), but is not in conflict with the provisions of this Act.

Foreign arbitral award may be made order of court and enforced as such

2. (1) Any foreign arbitral award may, subject to the provisions of sections 3 and 4, be made an order of court by any court.

(2) Where any amount payable in terms of such award is expressed in a currency other than the currency of the Republic, the award shall be made an order of court as if it were an award for such amount in the currency of the Republic as, on the basis of the rate of exchange prevailing at the date of the award, is equivalent to the amount so payable.

(3) Any such award which has under subsection (1) been made an order of court, may be enforced in the same manner as any judgment or order to the same effect.

Application for award to be made order of court

3. Application for an order of court mentioned in section 2(1) shall be made to any court and shall -

- (a) be accompanied by -
 - (i) the original foreign arbitral award concerned and the original arbitration agreement in terms of which that award was made, authenticated in the manner in which foreign documents may be authenticated to enable them to be produced in any court; or
 - (ii) a certified copy of that award and of that agreement; and
- (b) if that award or agreement is in any language other than one of the official languages of the Republic, be accompanied by a sworn translation thereof into one of such official languages, authenticated in the manner in which foreign documents may be authenticated to enable them to be produced in any court.

[The term “official languages” refers to the period before independence when English and Afrikaans were both official languages of “South West Africa”. The only official language of Namibia is English (Namibian Constitution, Art 3(1)).]

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When order of court may be refused

4. (1) A court may refuse to grant an application for an order of court in terms of section 3 if -

- (a) the court finds that -
 - (i) a reference to arbitration is not permissible in the Republic in respect of the subject-matter of the dispute concerned; or
 - (ii) enforcement of the award concerned would be contrary to public policy in the Republic; or
- (b) the party against whom the enforcement of the award concerned is sought, proves to the satisfaction of the court that -
 - (i) the parties to the arbitration agreement concerned had, under the law applicable to them, no capacity to contract, or that the said agreement is invalid under the law to which the parties have subjected it or of the country in which the award was made; or
 - (ii) he did not receive the required notice of the appointment of the arbitrator or of the arbitration proceedings concerned or was otherwise not able to present his case; or
 - (iii) the award deals with a dispute not contemplated by or falling within the provisions of the relevant reference to arbitration, or that it contains decisions on matters beyond the scope of the reference to arbitration: Provided that if the decisions on matters referred to arbitration can be separated from those on matters not so referred, that part of the award which contains decisions on matters referred to arbitration may be made an order of court under section 2(1); or
 - (iv) the constitution of the arbitration tribunal concerned was or the arbitration proceedings concerned were not in accordance with the relevant arbitration agreement or with the law of the country in which the arbitration took place; or
 - (v) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

(2) If, on an application in terms of section 3, the court is satisfied that an application for the setting aside or suspension of the award has been made to a competent authority of the country in which, or under the law of which, the award was made, the court may in its discretion postpone the hearing of the said application in terms of section 3, to such date as it may determine, and may thereupon, on the application of the party seeking to enforce the award, order the party against whom the enforcement is sought, to give suitable and specified security.

Short title

5. This Act shall be called the Recognition and Enforcement of Foreign Arbitral Awards Act, 1977.