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REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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DEPARTMENT OF THE PRIME MINISTER

No. 592. 13 April 1977.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 40 of 1977: Recognition and Enforcement of Foreign Arbitral Awards Act, 1977.

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 592. 13 April 1977.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 40 van 1977: Wet op die Erkenning en Afdwinging van Vreemde Arbitrasietoekennings, 1977.

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Act No. 40, 1977 RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS ACT, 1977.

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.)

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—

(i) "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;

(ii) "court" means a court of a provincial or local division of the Supreme Court of South Africa;

(iii) "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

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WET OP DIE ERKENNING EN AFDWINGING VAN VREEMDE ARBITRASIETOEKENNINGS, 1977. **Wet No. 40, 1977**

WET

Om voorsiening te maak vir die erkenning en afdwinging van vreemde arbitrasietoekennings en vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 25 Maart 1977.)

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing.

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—

(i) „gewaarmerkte afskrif" 'n afskrif gewaarmerk op die wyse waarop vreemde stukke gewaarmerk kan word ten einde in 'n hof oorgelê te kan word;

(ii) „hof" 'n hof van 'n provinsiale of plaaslike afdeling van die Hooggeregshof van Suid-Afrika;

(iii) „vreemde arbitrasietoekenning" 'n arbitrasietoekenning—

(a) gemaak buite die Republiek; of

(b) waarvan die afdwinging nie ingevolge die Wet op Arbitrasie, 1965 (Wet No. 42 van 1965), toelaatbaar is nie maar nie met die bepalings van hierdie Wet in stryd is nie.

Vreemde arbitrasietoekenning kan hofbevel gemaak en as sodanig afgedwing word.

2. (1) 'n Vreemde arbitrasietoekenning kan, behoudens die bepalings van artikels 3 en 4, deur 'n hof 'n hofbevel gemaak word.

(2) Wanneer 'n bedrag wat betaalbaar is ingevolge sodanige toekenning uitgedruk is in 'n ander betaalmiddel as die betaalmiddel van die Republiek, word die toekenning 'n hofbevel gemaak asof dit 'n toekenning was vir die bedrag, in die betaalmiddel van die Republiek, wat volgens die wisselkoers wat geheers het op die datum van die toekenning, gelyk is aan die bedrag aldus betaalbaar.

(3) So 'n toekenning wat kragtens subartikel (1) 'n hofbevel gemaak is, kan op dieselfde wyse afgedwing word as 'n vonnis of bevel met dieselfde strekking.

Aansoek dat toekenning hofbevel gemaak word.

3. Aansoek om 'n hofbevel in artikel 2 (1) vermeld, moet by enige hof gedoen word en moet—

(a) vergesel wees van—

(i) die betrokke oorspronklike vreemde arbitrasietoekenning en die oorspronklike arbitrasie-ooreenkoms ingevolge waarvan daardie toekenning gemaak is, gewaarmerk op die wyse waarop vreemde stukke gewaarmerk kan word ten einde in 'n hof oorgelê te kan word; of

(ii) 'n gewaarmerkte afskrif van daardie toekenning en van daardie ooreenkoms; en

(b) indien daardie toekenning of ooreenkoms in 'n ander taal as een van die amptelike tale van die Republiek is,

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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.

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.

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vergesel wees van 'n beëdigde vertaling daarvan in een van sodanige amptelike tale, gewaarmerk op die wyse waarop vreemde stukke gewaarmerk kan word ten einde in 'n hof oorgelê te kan word.

Wanneer hofbevel geweier kan word.

4. (1) 'n Hof kan weier om 'n aansoek, ingevolge artikel 3, om 'n hofbevel toe te staan indien—

(a) die hof bevind dat—

(i) 'n verwysing na arbitrasie in die Republiek nie toelaatbaar is nie ten opsigte van die onderwerp van die betrokke geskil; of

(ii) afdwinging van die betrokke toekenning strydig met die openbare beleid in die Republiek sou wees; of

(b) die party teen wie afdwinging van die betrokke toekenning verlang word, ten genoeë van die hof bewys dat—

(i) die partye by die betrokke arbitrasie-ooreenkoms ingevolge die reg wat vir hulle geld, handelingsonbevoeg was, of dat genoemde ooreenkoms ongeldig is ingevolge die reg waaraan die partye dit onderwerp het of van die land waarin die toekenning gemaak is; of

(ii) hy nie die vereiste kennisgewing van die aanstelling van die betrokke arbiter of van die betrokke arbitrasieverrigtinge ontvang het of andersins nie in staat was om sy saak te stel nie; of

(iii) die toekenning gaan om 'n geskil wat nie deur die betrokke verwysing na arbitrasie beoog is of onder die bepalings daarvan val nie, of dat dit beslissings bevat oor aangeleenthede wat buite die bestek van die verwysing na arbitrasie val: Met dien verstande dat indien die beslissings oor aangeleenthede wat na arbitrasie verwys is, geskei kan word van dié oor aangeleenthede wat nie aldus verwys is nie, daardie gedeelte van die toekenning wat beslissings bevat oor aangeleenthede wat na arbitrasie verwys is, 'n hofbevel kragtens artikel 2 (1) gemaak kan word; of

(iv) die samestelling van die betrokke arbitrasiehof, of die betrokke arbitrasieverrigtinge, nie in ooreenstemming met die betrokke arbitrasie-ooreenkoms of met die reg van die land waarin die arbitrasie plaasgevind het, was nie; of

(v) die toekenning vir die partye nog nie bindend geword het nie, of tersyde gestel of opgeskort is deur 'n bevoegde gesag van die land waarin of kragtens die reg waarvan die toekenning gemaak is.

(2) Indien die hof by 'n aansoek ingevolge artikel 3 oortuig is dat 'n aansoek om die tersydestelling of opskorting van die toekenning gedoen is by 'n bevoegde gesag van die land waarin of kragtens die reg waarvan die toekenning gemaak is, kan die hof na goeddunke die verhoor van genoemde aansoek ingevolge artikel 3 uitstel tot die datum wat hy bepaal, en kan daarop op aansoek van die party wat afdwinging van die toekenning verlang, die party teen wie die afdwinging verlang word, beveel om gepaste en vermelde sekerheid te stel.

Kort titel.

5. Hierdie Wet heet die Wet op die Erkenning en Afdwinging van Vreemde Arbitrasietoekennings, 1977.