

CONTRACTS

Conventional Penalties Act 15 of 1962, as amended in South Africa to November 1979

Summary: This Act ([RSA GG 202](#)) alters the pre-existing common law by providing for the enforceability of penalty stipulations in breaches of contract.

Applicability to SWA: 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* ([RSA GG 1771](#)), and it is made expressly applicable to South West Africa by section 18(2) of that Act.

Transfer of administration to SWA: 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 33/1979), dated 12 November 1979, as amended. (Note that it is one of the laws listed in the South African *Justice Laws Rationalisation Act 18 of 1996* ([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.

Amendments: As indicated above, the following pre-independence South African amendment was applicable to SWA –

- *General Law Amendment Act 102 of 1967* ([RSA GG 1771](#)).

Regulations: The Act makes no provision for regulations.

Cases: *Barotti Furniture (Pty) Ltd v Moodley* 1996 NR 295 (HC).