



GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 2300.

16 October 1987.

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

No. 87 of 1987: Protection of Businesses Amendment Act, 1987.

No. 2300.

16 Oktober 1987.

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

No. 87 van 1987: Wysigingswet op die Beskerming van Ondernemings, 1987.

Act No. 87, 1987

PROTECTION OF BUSINESSES AMENDMENT ACT, 1987

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Protection of Businesses Act, 1978, so as to extend the prohibition of the enforcement of foreign judgments, orders, directions, arbitration awards and letters of requests to interrogatories, commissions rogatoire and other requests; to extend the prohibition of the furnishing of any information relating to any business carried on in or outside the Republic; to extend the said prohibitions by including therein a reference to any act or transaction which is connected with the mining of any matter or material; to prohibit the recognition or enforcement of certain foreign judgments, arbitration awards and related orders and directions, relating to any liability arising out of the bodily injury or death of any person resulting directly or indirectly from the consumption or use of, or the exposure to, any natural resource of the Republic, unless the same liability would have arisen under the law of the Republic; to lay down what conduct on the part of a person against whom a foreign judgment was given shall for the purposes of the enforcement or recognition of that judgment in the Republic, not be regarded as a submission to the jurisdiction of the foreign court or as the conferment upon such court of jurisdiction in respect of such person; and to provide that a foreign judgment in relation to certain acts or transactions shall in certain circumstances be a defence to an action brought in a court in the Republic; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 6 October 1987.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of
section 1 of
Act 99 of 1978,
as amended by
section 1 of
Act 114 of 1979.

1. Section 1 of the Protection of Businesses Act, 1978 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for paragraph (a) of subsection (1) 5
of the following paragraph:

“(a) no judgment, order, direction, arbitration award, 10
interrogatory, commission rogatoire, [or] letters of
request or any other request delivered, given or is-
sued or emanating from outside the Republic and
arising from any act or transaction contemplated in
subsection (3), shall be enforced in the Republic;”;

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ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Wet op die Beskerming van Ondernemings, 1978, ten einde die verbod op die afdwinging van buitelandse vonnisse, bevele, opdragte, arbitrasietoekennings en versoekbriewe uit te brei tot vraagpunte, rogatore kommissies en ander versoeke; die verbod op die verstrekking van enige inligting betreffende enige onderneming binne of buite die Republiek gedryf, uit te brei; gemelde verbodinge uit te brei deur 'n verwysing na 'n handeling of transaksie wat in verband staan met die myn van enige stof of materiaal daarby in te sluit; die erkenning of afdwinging te verbied van sekere buitelandse vonnisse, arbitrasietoekennings en verwante bevele en opdragte betreffende enige aanspreeklikheid wat voortspruit uit die liggaamlike besering of dood van enige persoon wat regstreeks of onregstreeks voortvloei uit die gebruik of gebruik van, of die blootstelling aan, enige natuurlike hulpbron van die Republiek, tensy dieselfde aanspreeklikheid kragtens die reg van die Republiek sou ontstaan; te bepaal watter gedrag van die kant van die persoon teen wie 'n buitelandse beslissing gelewer is, vir die doeleindes van die erkenning of afdwinging van daardie vonnis in die Republiek, nie beskou mag word as 'n onderwerping aan die jurisdiksie van die buitelandse hof of as die verlening aan sodanige hof van jurisdiksie ten opsigte van sodanige persoon nie; en te bepaal dat 'n buitelandse vonnis ten opsigte van sekere handeling of transaksies in sekere omstandighede 'n verweer sal uitmaak teen 'n aksie wat in 'n hof in die Republiek ingestel word; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 6 Oktober 1987.)*

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

1. Artikel 1 van die Wet op die Beskerming van Ondernemings, 1978 (hieronder die Hoofwet genoem), word hierby gewysig—

(a) deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

“(a) word geen vonnis, bevel, opdrag, arbitrasietoekennings, vraagpunte, rogatore kommissie, **[of]** versoekbrief of enige ander versoek wat buite die Republiek gelewer, gegee of uitgereik is, of van buite die Republiek afkomstig is, en wat voortspruit uit 'n handeling of transaksie in subartikel (3) bedoel, in die Republiek afgedwing nie;”;

Wysiging van artikel 1 van Wet 99 van 1978, soos gewysig deur artikel 1 van Wet 114 van 1979.

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- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
 “(b) no person shall in compliance with or in response to any order, direction, interrogatory, commission rogatoire, [or] letters of request or any other request issued or emanating from outside the Republic, furnish any information as to any business whether carried on in or outside the Republic;”;
- (c) by the substitution for paragraph (c) of subsection (2) of the following paragraph:
 “(c) relate only to specified goods or businesses or classes of goods or businesses, or to orders, directions, interrogatories, commissions rogatoire, [or] letters of request or any other request issued in or emanating from a specified country;”;
- (d) by the substitution for subsection (3) of the following subsection:
 “(3) In the application of subsection (1) (a) an act or transaction shall be an act or transaction which took place at any time, whether before or after the commencement of this Act, and is connected with the mining, production, importation, exportation, refinement, possession, use or sale of or ownership to any matter or material, of whatever nature, whether within, outside, into or from the Republic.”

Insertion of
section 1D in
Act 99 of 1978.

2. The following section is hereby inserted in the principal Act after section 1C:

1D. No judgment, order, direction, arbitration award, interrogatory, commission rogatoire, letters of request or any other request delivered, given or issued outside the Republic or emanating from outside the Republic and which arises from any act or transaction referred to in subsection (3) of section 1 shall be recognized or enforced in the Republic, irrespective of whether or not the Minister has given his consent in terms of that section, if such judgment, order, direction, arbitration award, interrogatory, commission rogatoire, letters of request or other request is connected with any liability which arises from any bodily injury of any person resulting directly or indirectly from the consumption or use of or exposure to any natural resource of the Republic, whether unprocessed or partially processed or wholly processed, or any product containing or processed from any such natural resource, unless the same liability would have arisen under the law of the Republic, as it existed at the time of the occurrence of the event which gave rise to the liability.”

Insertion of
section 1E in
Act 99 of 1978.

3. The following section is hereby inserted in the principal Act after section 1D:

1E. (1) For the purposes of determining the question whether or not a judgment delivered by a court in a foreign country relating to any act or transaction referred to in section 1 (3) can be recognized or enforced in the Republic—
 (a) the person against whom the judgment was given shall not be regarded as having submitted to the jurisdiction of that court by reason only of the fact that he appeared, whether conditionally or otherwise, in the proceedings in question or of the fact that he took any steps in connection

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(b) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:

“(b) mag niemand ingevolge of in antwoord op [’n] enige bevel, opdrag, vraagpunte, rogatore kommissie, [of] versoekbrief of enige ander versoek wat buite die Republiek uitgereik of van buite die Republiek afkomstig is, enige inligting verstrekkende betreffende enige onderneming, hetsy dit in of buite die Republiek gedryf word.”;

(c) deur paragraaf (c) van subartikel (2) deur die volgende paragraaf te vervang:

“(c) betrekking hê slegs op bepaalde goedere of ondernemings of klasse goedere of ondernemings, of op bevel, opdragte, vraagpunte, rogatore kommissies, [of] versoekbriewe of enige ander versoeke in ’n bepaalde land uitgereik of van ’n bepaalde land afkomstig;” en

(d) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) By die toepassing van subartikel (1) (a) is ’n handeling of transaksie ’n handeling of transaksie wat te eniger tyd, hetsy voor of na die inwerkingtreding van hierdie Wet, plaasgevind het en in verband staan met die myn, produksie, invoer, uitvoer, veredelings, besit, gebruik of verkoop van of eiendomsreg op enige stof of materiaal, van watter aard ook al, hetsy binne, buite, in of uit die Republiek.”.

2. Die volgende artikel word hierby in die Hoofwet na artikel 1C ingevoeg:

Invoeging van artikel 1D in Wet 99 van 1978.

30 “Verbod op erkenning of afdwinging van sekere vonnisse, bevel, opdragte, arbitrasietoekenning, vraagpunte, rogatore kommissie, versoekbrief of enige ander versoek wat buite die Republiek gelewer, gegee of uitgereik is of van buite die Republiek afkomstig is en wat voortspruit uit ’n handeling of transaksie in subartikel (3) van artikel 1 bedoel, word in die Republiek erken of afgedwing, ongeag of die Minister sy toestemming ingevolge daardie artikel verleen het al dan nie, indien daardie uitspraak, bevel, opdrag, arbitrasietoekenning, vraagpunte, rogatore kommissie, versoekbrief of ander versoek in verband staan met enige aanspreeklikheid wat voortspruit uit enige liggaamlike besering van enige persoon wat regstreeks of onregstreeks voortvloei uit die verbruik of gebruik van of blootstelling aan enige natuurlike hulpbron van die Republiek, ongeag of dit onverwerk, gedeeltelik verwerk of geheel en al verwerk is, tensy dieselfde aanspreeklikheid ook sou ontstaan kragtens die reg van die Republiek, soos dit bestaan het op die tydstip van die plaasvind van die gebeurtenis wat die aanspreeklikheid laat ontstaan het.”.

3. Die volgende artikel word hierby in die Hoofwet na artikel 1D ingevoeg:

Invoeging van artikel 1E in Wet 99 van 1978.

55 “Gedrag van persoon teen wie vonnis in vreemde land gelewer is wat nie beskou word as onderwerp deur sodanige persoon aan jurisdiksie van sodanige hof, en omstandig-

1E. (1) Vir die doeleindes van die bepaling van die vraag of ’n vonnis wat gelewer is deur ’n hof in ’n vreemde land betreffende enige handeling of transaksie vermeld in artikel 1 (3), in die Republiek erken of afgedwing kan word—

(a) word die persoon teen wie die uitspraak gelewer is nie geag hom aan die jurisdiksie van daardie hof te onderwerp het nie bloot op grond van die feit dat hy in die betrokke verrigtinge verskyn het, hetsy voorwaardelik of andersins, of van die feit dat hy enige stappe in verband met sodanige

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ing to such person which shall not be regarded as having conferred jurisdiction on such court.

with such proceedings for the following purposes, or any one or more of them, namely—

- (i) to contest the jurisdiction of that court;
 - (ii) to apply for the dismissal of the action in question or for the setting aside of the writ or summons in those proceedings on the ground that the court did not have the required jurisdiction;
 - (iii) to protect or to obtain the release of any property attached for the purpose of such proceedings, or threatened with attachment in those proceedings;
 - (iv) to apply to the court not to exercise its jurisdiction, if it was a case where that court had a discretion to decide whether or not to exercise its jurisdiction;
 - (v) to apply to such court for the dismissal of, or a stay of, the proceedings on the ground that the matter should be referred to arbitration or to a court in another country for a decision;
 - (vi) to institute review proceedings in connection with, or to lodge an appeal against, any order made in the proceedings mentioned in paragraphs (i) to (v);
- (b) it shall not be regarded that such court had jurisdiction in respect of the person against whom such judgment was given merely on the ground of the fact that such person did business within the area of that court, unless such person, at the time when the events occurred which gave rise to the relevant proceedings, conducted a permanent business establishment within that area.

(2) Where the person against whom judgment was delivered by a court in a foreign country in respect of any act or transaction referred to in section 1 (3), entered appearance in the proceedings in which such judgment was given in order to defend the action on the merits thereof or took any other step in such proceedings in order to defend the action on the merits thereof, such entry of appearance and such step shall not be regarded as a submission to the jurisdiction of the court if in terms of the law governing such court and the proceedings conducted therein, such person was not entitled to contest the jurisdiction of the court unless he entered such appearance or took such step, as the case may be, in order to defend the action on the merits thereof."

Insertion of section 1F in Act 99 of 1978.

4. The following section is hereby inserted in the principal Act after section 1E:

"Foreign judgment to constitute *res judicata*."

1F. It shall be a defence to any action brought in any court in the Republic if it is proved to the satisfaction of such court that the cause of action founding the action so brought was the subject of a judgment given by a court in a foreign country, if—

- (a) in terms of the laws of the foreign country the court which gave such judgment was competent to give that judgment;
- (b) in terms of such laws such judgment is final and conclusive; and
- (c) the parties to the proceedings in which such

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- hede betref-
fende soda-
nige persoon
wat nie be-
skou word as
5 sou dit juris-
diksie aan
daardie hof
verleen het
nie.
- 10 verrigtinge gedoen het vir die volgende doelein-
des of een of meer daarvan, te wete—
- (i) om die jurisdiksie van daardie hof te betwis;
- (ii) om aansoek te doen om die afwysing van
die betrokke aksie of om die tersydestelling
van die lasbrief of dagvaarding in daardie
verrigtinge op grond daarvan dat die hof nie
oor die vereiste regsbevoegdheid beskik het
nie;
- 15 (iii) om enige goed waarop beslag gelê is vir die
doeleindes van daardie verrigtinge, of wat
in daardie verrigtinge met beslaglegging be-
dreig is, te beskerm of om die vrystelling
daarvan te verkry;
- 20 (iv) om by die hof aansoek te doen om nie sy ju-
risdiksie uit te oefen nie, indien dit 'n geval
was waar daardie hof 'n diskresie gehad het
om te besluit of hy sy jurisdiksie gaan uitoe-
fen al dan nie;
- 25 (v) om by daardie hof aansoek te doen om die
afwysing of 'n opskorting van die verrig-
tinge op grond daarvan dat die saak na arbi-
trasie of na 'n hof in 'n ander land vir 'n be-
slissing verwys behoort te word;
- (vi) om hersieningsverrigtinge in te stel in ver-
band met, of om 'n appél aan te teken teen,
enige bevel wat gegee is in die verrigtinge in
paragrafe (i) tot (v) vermeld;
- 30 (b) word dit nie beskou dat daardie hof jurisdiksie
gehad het ten opsigte van die persoon teen wie
daardie vonnis gelewer is bloot op grond van die
feit dat daardie persoon binne die gebied van die
hof sake gedoen het, tensy daardie persoon, op
35 die tydstip waarop die gebeurtenis wat die be-
trokke verrigtinge tot gevolg gehad het, 'n per-
manente sake-onderneming in daardie gebied
gedryf het.
- (2) Waar die persoon teen wie 'n beslissing deur 'n
hof in 'n vreemde land gelewer is ten opsigte van 'n
40 handeling of transaksie vermeld in artikel 1 (3), ver-
skyning aangeteken het in die verrigtinge waarin
daardie beslissing gelewer is ten einde die aksie op
die meriete daarvan te verdedig of enige ander stap
in sodanige verrigtinge gedoen het ten einde die ak-
45 sie op die meriete daarvan te verdedig, word soda-
nige aantekening van verskyning en sodanige stap nie
as 'n onderwerping aan die jurisdiksie van daardie
hof beskou nie indien ingevolge die reg wat daardie
hof en die verrigtinge daarin gevoer, beheers soda-
50 nige persoon nie geregtig was om die jurisdiksie van
die hof te betwis nie tensy hy sodanige verskyning
aangeteken het of sodanige stap gedoen het, na ge-
lang van die geval, ten einde die aksie op die meriete
daarvan te verdedig.”.

55 4. Die volgende artikel word hierby in die Hoofwet na artikel
1E ingevoeg:

Invoeging van
artikel 1F in
Wet 99 van 1978.

- “Vreemde
vonnis maak
res judicata
uit.
- 60 1F. Dit is 'n verweer teen enige aksie wat in enige
hof in die Republiek ingestel word indien daar ten
genoeë van daardie hof bewys word dat die eisoor-
saak waarop die aksie wat aldus ingestel word, ge-
fundeer is die onderwerp was van 'n beslissing deur
'n hof in 'n vreemde land gegee, indien—
- (a) ingevolge die reg van die vreemde land die hof
wat sodanige beslissing gelewer het, bevoeg was
65 om daardie vonnis te lewer;
- (b) ingevolge sodanige reg sodanige beslissing finaal
en afdoende is; en
- (c) die partye by die verrigtinge waarin daardie be-

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judgment was given, or their successors in title, are the same as the parties to the proceedings in the Republic.”.

Insertion of section 1G in Act 99 of 1978.

5. The following section is hereby inserted in the principal Act after section 1F. 5

“Application of sections 1D, 1E and 1F.

1G. The provisions of sections 1D, 1E and 1F shall apply in respect of any judgment, order, direction, arbitration award, interrogatory, commission rogatoire, letters of request or other request, as the case may be, irrespective of whether it was or is delivered, given or issued before or after the commencement of the Protection of Businesses Amendment Act, 1987.”. 10

Short title.

6. This Act shall be called the Protection of Businesses Amendment Act, 1987. 15

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slissing gelewer is, of hul regsopvolgers, dieselfde is as die partye tot die verrigtinge in die Republiek.”.

5 1F ingevoeg: 5. Die volgende artikel word hierby in die Hoofwet na artikel

Invoeging van
artikel 1G in
Wet 99 van 1978.

“Toepassing
van artikels
1D, 1E en
1F.

10

1G. Die bepalings van artikels 1D, 1E en 1F is van toepassing ten opsigte van enige vonnis, bevel, opdrag, arbitrasietoekening, vraagpunte, rogatore kommissie, versoekbrief of ander versoek, na gelang van die geval, hetsy of dit voor of na die inwerking-treding van die Wysigingwet op die Beskerming van Ondernemings, 1987, gelewer, gegee of uitgereik is of word.”.

15 6. Hierdie Wet heet die Wysigingwet op die Beskerming van Ondernemings, 1987. Kort titel.

