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THE PRESIDENCY

No. 600

29 June 2001

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

No. 9 of 2001: Export Credit and Foreign Investments Re-insurance Amendment Act, 2001.

DIE PRESIDENSIE

No. 600

29 Junie 2001

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

No. 9 van 2001: Wysigingswet op Uitvoerkrediet- en Buitelandse Beleggingsherversekering, 2001.



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Act No. 9, 2001

EXPORT CREDIT AND FOREIGN INVESTMENTS
RE-INSURANCE AMENDMENT ACT, 2001

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the Acting President.)
(Assented to 27 June 2001.)

ACT

To amend the Export Credit and Foreign Investments Re-insurance Act, 1957, so as to define an expression and to amend or delete certain definitions; to empower the Minister to enter into an agreement with a registered insurer, to be known as the Export Credit Agency, with the object of insuring certain contracts on behalf of Government; to empower the Agency to establish a Reserve Fund; to enable the Agency to make investments; to repeal certain obsolete provisions; and to make provision for transitional arrangements; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 78 of 1957, as amended by section 1 of Act 66 of 1961, section 1 of Act 75 of 1971, section 1 of Act 81 of 1981, section 1 of Act 27 of 1988 and section 1 of Act 49 of 1996

1. Section 1 of the Export Credit and Foreign Investments Re-insurance Act, 1957 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the deletion of the definition of “contract of insurance”;
- (b) by the substitution for the definition of “contract of re-insurance” of the following definition:

“ ‘contract of [re-insurance] insurance’ means a contract of [re-insurance] insurance entered into in terms of an agreement referred to in section [two] 2, and includes any amendment thereof if such amendment has, at any time before or after it was made, been approved by the Minister in consultation with the Export Credit Agency;”;
- (c) by the insertion before the definition of “Fund” of the following definition:

“ ‘Export Credit Agency’ means the person contracted in terms of section 2;”;
- (d) by the substitution for the definition of “Fund” of the following definition:

“ ‘Fund’ means the [Re-insurance] Reserve Fund [for Export Credit and Foreign Investments] established under section 5;”;
- (e) by the substitution for the definition of “Minister” of the following definition:

“ ‘Minister’ means the Minister of [Economic Affairs and Technology] Trade and Industry;”.

WYSIGINGSWET OP UITVOERKREDIET- EN BUITELANDSE BELEGGINGSHERVERSEKERING, 2001 **Wet No. 9, 2001**

ALGEMENE VERDUDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

(Engelse teks deur die Waarnemende President geteken.)
(Goedgekeur op 27 Junie 2001.)

WET

Tot wysiging van die Uitvoerkrediet- en Buitelandse Beleggingsherversekeringswet, 1957, ten einde 'n uitdrukking te omskryf en sekere woordomskrywings te wysig of te skrap; die Minister te magtig om 'n ooreenkoms met 'n geregistreerde versekeraar aan te gaan, te wete die Uitvoerkredietagentskap, met die doel om sekere kontrakte namens die Regering te verseker; die Agentskap te magtig om 'n Reserwefonds in te stel; die Agentskap in staat te stel om beleggings te doen; sekere uitgediende bepalings te herroep; en vir oorgangsmaatreëls voorsiening te maak; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

Wysiging van artikel 1 van Wet 78 van 1957, soos gewysig deur artikel 1 van Wet 66 van 1961, artikel 1 van Wet 75 van 1971, artikel 1 van Wet 81 van 1981, artikel 1 van Wet 27 van 1988 en artikel 1 van Wet 49 van 1996

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1. Artikel 1 van die Uitvoerkrediet- en Buitelandse Beleggingsherversekeringswet, 1957 (hieronder die Hoofwet genoem), word hierby gewysig—

- (a) deur die omskrywing van "Fonds" deur die volgende omskrywing te vervang:
" 'Fonds' die [Herversekeringsfonds vir Uitvoerkrediet en Buitelandse Beleggings] Reserwefonds ingestel kragtens artikel 5;";
- (b) deur die omskrywing van "herversekeringskontrak" deur die volgende omskrywing te vervang:
"[herversekeringskontrak,] 'versekeringskontrak' 'n [herversekeringskontrak] versekeringskontrak aangegaan ingevolge 'n in artikel [twee] 2 bedoelde ooreenkoms, en sluit enige wysiging daarvan in, indien sodanige wysiging te eniger tyd voordat of nadat dit aangebring is, deur die Minister in oorleg met die Uitvoerkredietagentskap goedgekeur is;";
- (c) deur die omskrywing van "Minister" deur die volgende omskrywing te vervang:
" 'Minister' die Minister van [Ekonomiese Sake en Tegnologie] Handel en Nywerheid;";
- (d) deur voor die omskrywing van "versekeringskontrak" die volgende omskrywing in te voeg:
" 'Uitvoerkredietagentskap' die persoon ingevolge artikel 2 gekontrakteer;"; en
- (e) deur die omskrywing van "versekeringskontrak" te skrap.

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Act No. 9, 2001

EXPORT CREDIT AND FOREIGN INVESTMENTS
RE-INSURANCE AMENDMENT ACT, 2001**Amendment of section 2 of Act 78 of 1957, as substituted by section 2 of Act 81 of 1981 and amended by section 2 of Act 27 of 1988****2. Section 2 of the principal Act is hereby amended—**

- (a) by the substitution for the words preceding paragraph (a) of the following words:

“The Minister [may] shall 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),] the Export Credit Agency with the object of [re-insuring, against the payment of a premium and] insuring on behalf of the Government 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] subject to risk of monetary loss or monetary detriment attributable to circumstances beyond the control of the person suffering the loss or detriment and arising out of or in connection with—”;

- (b) by the substitution for paragraph (ii) of the following paragraph:

“(ii) nationalization, expropriation or confiscation;”;

- (c) by the substitution for paragraph (v) of the following paragraph:

“(v) such other causes as the [Minister may in consultation with the Minister of Finance deem] Export Credit Agency deems to arise from risks not normally insurable.”; and

- (d) by the addition of the following subsections, the existing section becoming subsection (1):

“(2) The Export Credit Agency shall be registered as an insurer as contemplated in section 7(1)(a) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), and shall in its capacity as a registered insurer and juristic person be subject to the relevant insurance and company laws.

(3) Without detracting in any way from the Minister’s power to determine through the agreement contemplated in section 2 the terms and conditions in terms of which the Export Credit Agency shall conduct its business, the Minister may appoint members of the Board and the Chief Executive Officer of the Export Credit Agency.

(4) The members and Chief Executive Officer contemplated in subsection (3) shall be suitably qualified to perform the functions of the Export Credit Agency.”.

Substitution of section 3 of Act 78 of 1957, as amended by section 2 of Act 88 of 1962**3. The following section is hereby substituted for section 3 of the principal Act:****“Percentage cover**

3. A contract of [re-insurance] 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] per cent 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.**].”.

Substitution of section 4 of Act 78 of 1957**4. The following section is hereby substituted for section 4 of the principal Act:****“Premiums**

4. The rate of premium for any contract of [re-insurance] insurance shall be fixed by the [Minister in consultation with the Minister of Finance] Export Credit Agency, 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.”.

Wysiging van artikel 2 van Wet 78 van 1957, soos vervang deur artikel 2 van Wet 81 van 1981 en gewysig deur artikel 2 van Wet 27 van 1988**2. Artikel 2 van die Hoofwet word hierby gewysig—**

- (a) deur die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

Die Minister [kan met enige persoon wat 'n geregistreerde versekeraar soos omskryf in artikel 1 van die Versekeringswet, 1943 (Wet 27 van 1943), is,] moet 'n ooreenkoms aangaan met die Uitvoerkredietagentskap met die oogmerk om, [teen betaling van 'n premie] namens die Regering en op sodanige [ander] bedinge en voorwaardes as wat in oorleg met die Minister van Finansies in daardie ooreenkoms voorgeskryf mag word, enige [versekeringskontrakte] kontrakte wat [deur daardie persoon] aangegaan word [met of ten behoeve van] deur persone wat in die Republiek sake doen, te [herverseker,] verseker synde [versekeringskontrakte teen] kontrakte onderhewig aan risiko van geldelike verlies of geldelike skade wat te wyte is aan omstandighede buite die beheer van die persoon wat die verlies of skade ly en wat voortvloei uit of in verband staan met—”;

- (b) deur paragraaf (ii) deur die volgende paragraaf te vervang:

“(ii) nasionalisering, onteiening of verbeurdverklaring”;

- (c) deur paragraaf (v) deur die volgende paragraaf te vervang:

“(v) [sodanige] die ander oorsake [as] wat volgens die beskouing van die [Minister in oorleg met die Minister van Finansies] Uitvoerkredietagentskap ontstaan uit risiko's wat nie normaalweg versekerbaar is nie.” en

- (d) deur die invoeging van die volgende subartikels, terwyl die bestaande artikel subartikel (1) word:

“(2) Die Uitvoerkredietagentskap moet geregistreer wees as 'n versekeraar soos bedoel in artikel 7(1)(a) van die Korttermynversekeringswet, 1998 (Wet No. 53 van 1998), en moet in sy hoedanigheid as 'n geregistreerde versekeraar en regspersoon onderhewig wees aan die tersaaklike versekerings- en maatskappyywette.

(3) Sonder om op enige wyse afbreuk te doen aan die Minister se bevoegdheid om deur die ooreenkoms in artikel 2 bedoel, die voorwaardes en bedinge te bepaal ingevolge waarvan die Uitvoerkredietagentskap sy besigheid sal bedryf, kan die Minister die lede van die Raad en die Hoof- Uitvoerende Beampte van die Uitvoerkredietagentskap aanstel.

(4) Die lede en die Hoof- Uitvoerende Beampte in subartikel (3) bedoel, moet gepas gekwalifiseer wees om die funksies van die Uitvoerkredietagentskap te verrig.”.

Vervanging van artikel 3 van Wet 78 van 1957, soos gewysig deur artikel 2 van Wet 88 van 1962**3. Artikel 3 van die Hoofwet word hierby deur die volgende artikel vervang:****“Persentasie dekking**

3. 'n [Herversekeringskontrak] Versekeringskontrak moet die maksimum persentasie van die verlies, soos in daardie kontrak omskryf, vermeld wat deur die skadeloosstelling onder daardie kontrak gedek word, en sodanige persentasie mag nie negentig persent van die verlies soos aldus omskryf te bowe gaan nie[: Met dien verstande dat die Minister in oorleg met die Minister van Finansies 'n hoër persentasie in enige besondere geval kan goedkeur].”.

Act No. 9, 2001

EXPORT CREDIT AND FOREIGN INVESTMENTS
RE-INSURANCE AMENDMENT ACT, 2001**Amendment of section 5 of Act 78 of 1957, as amended by section 3 of Act 88 of 1962, section 3 of Act 81 of 1981 and section 3 of Act 27 of 1988****5. Section 5 of the principal Act is hereby amended—**

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

“(1) The [Minister] Export Credit Agency shall establish a Reserve 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 purpose of this Act and premiums and other moneys accruing to the [Minister] Export Credit Agency under contracts of [re-insurance] insurance.”;

(b) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs, respectively:

“(b) [any fees referred to in section six and] any remuneration and allowances referred to in sections [seven] 7 and [eight] 8;

(c) such other costs of administering this Act as may be determined by the Minister in consultation with the [Minister of Finance] Export Credit Agency.”;

(c) by the substitution for subsection (3) of the following subsection:

“(3) The [Minister in consultation with the Minister of Finance] Export Credit Agency 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 to 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] suitably invested by the Export Credit Agency in accordance with the requirements of the Short-term Insurance Act, 1998 (Act No. 53 of 1998).”;

(d) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) The Export Credit Agency may from time to time obtain advances from the Minister in order to meet temporary deficits in the Fund.

(b) Any loss incurred by the Minister as a result of such advances shall be met out of moneys appropriated by Parliament for this purpose.”; and

(e) by the deletion of paragraphs (c) and (d) of subsection (4).

Repeal of section 6 of Act 78 of 1957**6. Section 6 of the principal Act is hereby repealed.****Amendment of section 7 of Act 78 of 1957****7. Section 7 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:**

“(1) The Export Credit Agency shall establish, in consultation with the Minister, a committee which shall evaluate applications for contracts of insurance.”.

Amendment of section 10 of Act 78 of 1957**8. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:**

“(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.”.

Vervanging van artikel 4 van Wet 78 van 1957

4. Artikel 4 van die Hoofwet word hierby deur die volgende artikel vervang:

“Premies

4. Die bedrag van die premie vir 'n [herversekeringskontrak] versekeringskontrak word bepaal deur die [Minister in oorleg met die Minister van Finansies,] Uitvoerkredietagentskap, met inagneming van die [verskeie] onderskeie faktore wat op die risiko's wat deur die kontrak gedek word, betrekking het en van die koste van die uitvoering van hierdie Wet.”.

Wysiging van artikel 5 van Wet 78 van 1957, soos gewysig deur artikel 3 van Wet 88 van 1962, artikel 3 van Wet 81 van 1981 en artikel 3 van Wet 27 van 1988

5. Artikel 5 van die Hoofwet word hierby gewysig—

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

“(1) Die [Minister] Uitvoerkredietagentskap moet 'n Reserwefonds, [Fonds, bekend te staan as die Herversekeringsfonds vir Uitvoerkrediet en Buitelandse Beleggings,] instel [onder die beheer van die Direkteur-generaal: Handel en Nywerheid,] waarin die gelde wat deur die Parlement vir die doeleindes van hierdie Wet bewillig word en premies en ander gelde wat aan die [Minister] Uitvoerkredietagentskap onder [herversekeringskontrakte] versekeringskontrakte toeval, inbetaal moet word.”;

(b) deur in subartikel (2) paragrafe (b) en (c) deur onderskeidelik die volgende paragrafe te vervang:

“(b) [enige in artikel ses bedoelde gelde en] enige in artikels [sewe] 7 en [agti] 8 bedoelde besoldiging en toelaes;

(c) [sodanige] die ander koste van die uitvoering van hierdie Wet [as] wat deur die Minister in oorleg met die [Minister van Finansies] Uitvoerkredietagentskap bepaal [mag] word.”;

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

“(3) Die [Minister] Uitvoerkredietagentskap moet [in oorleg met die Minister van Finansies] van tyd tot tyd die bedrag in die Fonds bepaal wat beskikbaar gehou moet word vir die betaling van enige in subartikel (2) bedoelde eise, verpligtings, gelde en koste, en die balans van die gelde in die Fonds bo en behalwe die aldus bepaalde bedrag word [geag deposito's vir die doeleindes van die Wet op die Openbare Beleggingskommissarisse, 1984 (Wet 45 van 1984), te wees, en daarmee word dienoooreenkomstig gehandel] gepas deur die Uitvoerkredietagentskap belê in ooreenstemming met die vereistes van die Korttermynversekeringswet, 1998 (Wet No. 53 van 1998).”;

(d) deur in subartikel (4) paragrafe (a) en (b) deur onderskeidelik die volgende paragrafe te vervang:

“(a) Die Uitvoerkredietagentskap kan van tyd tot tyd voorskotte van die Minister verkry ten einde tydelike tekorte in die Fonds te bestry.

(b) Enige verlies wat deur die Minister as gevolg van sodanige voorskotte gely word, moet bestry word met gelde wat deur die Parlement vir hierdie doel bewillig word.”; en

(e) deur paragrafe (c) en (d) van subartikel (4) te skrap.

Herroeping van artikel 6 van Wet 78 van 1957

6. Artikel 6 van die Hoofwet word hierby herroep.

Wysiging van artikel 7 van Wet 78 van 1957

7. Artikel 7 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die Uitvoerkredietagentskap moet, in oorleg met die Minister, 'n komitee instel wat aansoek om versekeringskontrakte oorweeg.”.

Act No. 9, 2001

EXPORT CREDIT AND FOREIGN INVESTMENTS
RE-INSURANCE AMENDMENT ACT, 2001**Amendment of section 13 of Act 78 of 1957, as substituted by section 5 of Act 81 of 1981**

9. The following section is hereby substituted for section 13 of the principal Act:

“Short title

13. This Act shall be called the Export Credit and Foreign Investments
[Re-insurance] Insurance Act, 1957.”. 5

Substitution of word in Act 78 of 1957

10. The principal Act is hereby amended by the substitution for the word
“re-insurance”, wherever it occurs, of the word “insurance”.

Transitional arrangements

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11. (1) The balance of the Re-insurance Fund for Export Credit and Foreign Investments, as it existed immediately before the commencement of this Act, shall on commencement of this Act be transferred to the Reserve Fund established under section 5 of the principal Act.

(2) The Export Credit Agency shall as from the date of its agreement with the Minister
in terms of section 2, assume all rights and liabilities of Government that may exist in
terms of contracts of re-insurance entered into before the commencement of this Act. 15

Amendment of long title of Act 78 of 1957

12. The following long title is hereby substituted for the long title of the principal Act:
“To promote trade with countries outside the Republic by providing for the
[re-insurance with] insurance on behalf of the Government of the Republic
of [insurance] contracts in connection with export transactions, investments
and loans or similar facilities connected with such transactions; and to provide
for matters connected therewith.”. 20

Short title and commencement

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13. This Act shall be called the Export Credit and Foreign Investments Re-insurance
Amendment Act, 2001, and shall come into operation on a date fixed by the President by
proclamation in the *Gazette*.

WYSIGINGSWET OP UITVOERKREDIET- EN BUITELANDSE
BELEGGINGSHERVERSEKERING, 2001 **Wet No. 9, 2001****Wysiging van artikel 10 van Wet 78 van 1957**

8. Artikel 10 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Iemand wat opsetlik ’n valse of misleidende verklaring doen in of in verband met ’n versekeringskontrak [wat die onderwerp van ’n herversekeringskontrak uitmaak,] is aan ’n misdryf skuldig en by skuldigbevinding strafbaar met ’n boete [van hoogstens tweehonderd pond] of met gevangenisstraf vir ’n tydperk van hoogstens een jaar of met beide sodanige boete en sodanige gevangenisstraf.”.

Wysiging van artikel 13 van Wet 78 van 1957, soos vervang deur artikel 5 van Wet 81 van 1981

9. Artikel 13 van die Hoofwet word hierby deur die volgende artikel vervang:

“Kort titel

13. Hierdie Wet heet die Uitvoerkrediet- en Buitelandse [Beleggingshervesekeringswet] Beleggingsversekeringswet, 1957.”.

Vervanging van woord in Wet 78 van 1957

10. Die Hoofwet word hierby gewysig deur die woord “hervesekering” waar dit ook al voorkom, deur die woord “versekering” te vervang.

Oorgangsbepalings

11. (1) Die saldo van die Hervesekeringsfonds vir Uitvoerkrediet en Buitelandse Beleggings, soos wat dit onmiddellik voor die inwerkingtreding van hierdie Wet bestaan het, word by die inwerkingtreding van hierdie Wet oorgedra aan die Reserwefonds kragtens artikel 5 van die Hoofwet ingestel.

(2) Die Uitvoerkredietagentskap neem vanaf die datum van sy ooreenkoms met die Minister ingevolge artikel 2, alle regte en verpligtinge van die Regering oor wat bestaan ingevolge hervesekeringskontrakte wat voor die inwerkingtreding van hierdie Wet aangegaan is.

Wysiging van lang titel van Wet 78 van 1957

12. Die lang titel van die Hoofwet word hierby deur die volgende lang titel vervang:
“Ter bevordering van handel met lande buite die Republiek deur voorsiening te maak vir die [hervesekering met] versekering namens die Regering van die Republiek van [versekeringskontrakte] kontrakte in verband met uitvoertransaksies, beleggings en lenings of soortgelyke fasiliteite wat met sodanige transaksies in verband staan; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.”.

Kort titel en inwerkingtreding

13. Hierdie Wet heet die Wysigingswet op Uitvoerkrediet- en Buitelandse Beleggingshervesekering, 2001, en tree in werking op ’n datum by proklamasie deur die President in die *Staatskoerant* bepaal.

