

REPUBLIC OF SOUTH AFRICA

EXPORT CREDIT AND FOREIGN INVESTMENTS RE-INSURANCE AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill;
explanatory summary of Bill published in Government Gazette No. 22249 of 24 April 2001)
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 19—2001]

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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.

BILL

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

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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: 10
 “ ‘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: 15
 “ ‘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: 20
 “ ‘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;”.

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 enter into an agreement with any person who is a registered insurer as **[defined]** contemplated in section **[1] 7(1)(a)** of the Short-term Insurance Act, **[1943 (Act No. 27 of 1943)] 1998 (Act No. 53 of 1998)**, with the object of **[re-insuring, against the payment of a premium and]** insuring, on behalf of the Government and on such **[other]** terms and conditions as may, in consultation with the Minister of Finance, be prescribed in such agreement, **[any] all the 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.”.

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.”.

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.”.

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.”.

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

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. 5

(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 that may exist in terms of contracts of re-insurance entered into before the commencement of this Act.

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: 10
 “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.” 15

Short title and commencement

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*.

**MEMORANDUM ON THE OBJECTS OF THE EXPORT CREDIT
AND FOREIGN INVESTMENTS RE-INSURANCE AMENDMENT
BILL, 2001**

1. The Bill seeks to amend the Export Credit and Foreign Investments Re-insurance Act, 1957 (Act No. 78 of 1957) ("the Act"), by empowering the Minister of Trade and Industry to enter into an agreement with a person who is registered as an insurer with the object of insuring certain contracts on behalf of Government. The person with whom the Minister enters into an agreement will in terms of a proposed amendment to section 1 of the Act be known as the Export Credit Agency ("the Agency"). The primary responsibility of the Agency in terms of the proposed amendments to the Act will be to evaluate export credit and foreign investment risks and to provide export credit and foreign investment insurance cover on behalf of Government.

2. The current position is that the Department of Trade and Industry as an instrument to promote exports, through re-insurance to the Credit Guarantee Insurance Corporation of South Africa (CGIC), underwrites loans for the export of capital projects to other countries. Since South Africa broke out of isolation, billions of rand have been earned through this instrument. However, not only is the dispensation involving CGIC monopolistic in nature but it also contains inherent risks for Government which need to be managed very carefully. The fact is that the CGIC is not taking any risk on projects itself and has become little more than a commission agent whilst all the repayment risks are passed to the Government. Whilst it is accepted that Government should underwrite these risks, as other governments do, since these risks constitute a market gap in the provision of private sector insurance, these risks should be carefully assessed and managed in line with the best international practice. The Agency will assess individual transactions, provide risk inhibitors, issue export credit cover on behalf of the Government and manage and diversify the risk portfolio through strategic international alliances.

3. The Bill also seeks to replace the current Re-insurance Fund for Export Credit and Foreign Investments, established under section 5 of the Act, with a Reserve Fund out of which must be paid all claims, liabilities, fees and costs relating to the functioning of the Agency. It is proposed that the balance of the money in the Fund over and above the abovementioned payments must be suitably invested by the Agency. Provision is also made for the establishment of a committee to evaluate applications for contracts of insurance.

4. Consultation

The Department has in place agreements with a number of banking institutions as well as the Industrial Development Corporation (IDC) to make available export credit loans at specific interest rates set by the Department and insured through the CGIC. All these institutions were visited and consulted in respect of the amendments. These institutions include Nedcor Investment Bank, ABSA, SCMB, Nedbank, RMB, Investec, BOE and IDC. More than 50 representatives of these banks were briefed. All supported the amendments and pledged assistance and cooperation. Subsequent to this consultation process, exporters of capital projects and in particular the Capital Equipment Export Council were consulted. All supported the amendments. Consultations with international roleplayers included the Multilateral Investment Guarantee Agency of the World Bank, HSBC Equator Bank, ING Barings Bank and Hannover Re. All supported the amendments and were keen to cooperate. The World Bank offered a memorandum of understanding once the Agency is in place.

5. Financial implications for State

Currently some R40 million is being paid to the CGIC annually as commission. It is estimated that a full-scale Agency together with all its operations will register a 50% saving on this amount.

6. Parliamentary procedure

The State Law Advisers and the Department of Trade and Industry are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.