

REPUBLIC OF SOUTH AFRICA

EXPORT CREDIT AND FOREIGN INVESTMENTS INSURANCE AMENDMENT BILL

*(As amended by the Portfolio Committee on Trade and Industry
(National Assembly)) (The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 29B—2002]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP UITVOERKREDIET- EN BUITELANDSE BELEGGINGSVERSEKERING

*(Soos gewysig deur die Portefeuljekomitee oor Handel en Nywerheid
(Nasionale Vergadering)) (Die Afrikaanse teks is die amptelike vertaling van die
Wetsontwerp)*

(MINISTER VAN HANDEL EN NYWERHEID)

[W 29B—2002]

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

Words underlined with a solid line indicate insertions in existing enactments.

To amend the Export Credit and Foreign Investments Insurance Act, 1957, so as to define certain expressions and to delete certain definitions; to set out more clearly the percentage of a loss which is covered by an indemnity under a contract of insurance; to repeal an obsolete provision; and to substitute certain obsolete and gender-insensitive words and expressions; and to provide for matters incidental thereto.

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, section 1 of Act 49 of 1996 and section 1 of Act 9 of 2001

(a) by the deletion of the definitions of "contract of insurance" and "Export Credit Agency";

(b) by the insertion after the definition of “buyer” of the following definition: 10

“ ‘Corporation’ means the Export Credit Insurance Corporation of South Africa Limited or its lawful successor in title;” and

(c) by the insertion after the definition of "person" of the following definition:

“ ‘policy of insurance’ means a policy of insurance—

(a) entered into between the Corporation, acting within the general
ambit of authority granted in terms of an agreement contemplated in
section 2(1), and a person carrying on business in the Republic; and

(b) that provides for the insurance on behalf of the Government of a contract subject to risk as contemplated in section 2:”.

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 and sections 2 and 10 of Act 9 of 2001

2. Section 2 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Minister, in consultation with the Minister of Finance, shall enter into an agreement with the **[Export Credit Agency with the object of insuring on behalf of the Government on such terms and conditions as may, in consultation with the Minister of Finance, be prescribed in such agreement,]** Corporation with the object of insuring on behalf of the Government in terms of policies of insurance any contracts entered into by persons carrying on business in the Republic, being contracts 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—”; and

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

“(3) Without detracting in any way from the Minister’s power to determine through the agreement contemplated in **[section 2]** subsection (1) the **[terms and conditions in terms of]** manner in which the **[Export Credit Agency]** Corporation shall conduct its business, the Minister may appoint members of the Board and the Chief Executive Officer of the **[Export Credit Agency]** Corporation.”.

Substitution of section 3 of Act 78 of 1957, as substituted by section 3 of Act 9 of 2001

3. The following section is hereby substituted for section 3 of the principal Act:

“Percentage cover

3. The maximum sum insured in terms of any policy of insurance in the case of any act, transaction or investment contemplated in section 2(1)(a) and (b) shall not exceed 90 per cent of the total value of the contract or the investment in question, as the case may be.”.

Substitution of section 4 of Act 78 of 1957, as substituted by section 4 of Act 9 of 2001

4. The following section is hereby substituted for section 4 of the principal Act:

“Premiums

4. The rate of premium for any **[contract]** policy of insurance shall be fixed by the **[Export Credit Agency]** Corporation, having regard to the various factors which have a bearing on the risks covered by the **[contract]** policy and to the cost of administering this Act.”.

Repeal of section 8 of Act 78 of 1957

5. Section 8 of the principal Act is hereby repealed.

Substitution of certain expressions and words in Act 78 of 1957

6. The principal Act is hereby amended by the substitution—

- (a) for the expression “contract of insurance”, wherever it occurs, of the expression “policy of insurance”;
- (b) for the expression “Export Credit Agency”, wherever it occurs, of the word “Corporation”; and
- (c) for the words “he”, “him”, “his” and “sub-section”, wherever they occur, of the words “he or she”, “him or her”, “his or her” and “subsection”, respectively.

Short title and commencement

7. This Act shall be called the Export Credit and Foreign Investments Insurance Amendment Act, 2002, and shall be deemed to have come into operation on 2 July 2001.

MEMORANDUM ON THE OBJECTS OF THE EXPORT CREDIT AND FOREIGN INVESTMENTS INSURANCE AMENDMENT BILL, 2002

1. The Export Credit Insurance Corporation of South Africa Limited ("ECIC") was established as the official export credit agency of the Department of Trade and Industry ("the Department") in terms of the Export Credit and Foreign Investments Insurance Act, 1957 (Act No. 78 of 1957) ("the Act").

2. The principal objective of the ECIC is to facilitate and encourage South African export trade by underwriting bank loans and investments outside the country in order to enable foreign buyers to purchase capital goods and services from the Republic. To achieve this objective the ECIC evaluates export credit and foreign investment risks and provides export credit and foreign investment insurance cover on behalf of government.

3. Although section 2 of the Act is quite clear on the agency role of the ECIC, the definition of "contract of insurance" might be interpreted in such a way that the Minister may be required to approve every contract of insurance and any amendments thereto. Whilst such micro management by the Minister was never contemplated, insured parties are not at ease with the phrasing as large amounts of money are at stake. In order to create absolute clarity in this regard, the Bill seeks the repeal of the definition of "contract of insurance" and the insertion of a more appropriate definition, namely "policy of insurance". The insertion of the definition of "policy of insurance" necessitates certain consequential amendments to the Act (clauses 2, 4 and 6).

4. Section 3 of the Act provides that indemnity under a policy of insurance shall not exceed 90 per cent of the maximum percentage of loss defined in such contract. This means that if a transaction had a hypothetical value of R100, the Department could indemnify up to R90. Close scrutiny has revealed that a strict interpretation may allow a maximum indemnity of only R81 (90 per cent of R90). Clause 3 of the Bill seeks to clearly define the percentage of a loss which is covered by an indemnity under policies of insurance.

5. Section 8 of the Act empowers the Minister to appoint public service officers to perform work arising from the Act. With the establishment of the ECIC this requirement is no longer necessary. It is therefore proposed that the section be repealed.

6. The ECIC had not yet been incorporated on the date of commencement of the Export Credit and Foreign Investments Re-insurance Amendment Act, 2001 (Act No. 9 of 2001). With the incorporation of the ECIC the references to "Export Credit Agency" have become obsolete. It is therefore proposed that "Export Credit Agency" be replaced by "Corporation" wherever it occurs in the Act.

7. FINANCIAL IMPLICATIONS FOR STATE

None.

8. CONSULTATION

The proposed amendments to the Act resulted from requests by interested parties (banking institutions and the Industrial Development Corporation) which finance export loans underwritten by the ECIC. The banking institutions include ABSA Bank, NEDCOR, Standard Bank, First Rand Bank, BOE and Investec.

9. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department 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.