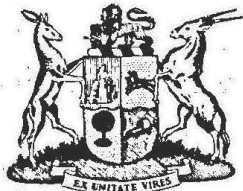


Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

*As 'n Nuusblad by die Poskantoor Geregistreer*

*Registered at the Post Office as a Newspaper*

**PRYS 40c PRICE**

**Plus AVB/GST**

**BUITELANDS 50c ABROAD**

**POSVRY - POST FREE**

Vol. 229

KAAPSTAD, 4 JULIE 1984

CAPE TOWN, 4 JULY 1984

No. 9287

KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 1356.

4 Julie 1984

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

—No. 71 van 1984: Wysigingswet op die Beskerming van Ondernemings, 1984.

No. 1356.

4 July 1984

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

No. 71 of 1984: Protection of Businesses Amendment Act, 1984.

**GENERAL EXPLANATORY NOTE:**

Words underlined with solid line indicate insertions in existing enactments.

**ACT**

To amend the Protection of Businesses Act, 1978, so as to prohibit the recognition or enforcement in the Republic of judgments of courts outside the Republic which direct the payment of multiple or punitive damages; and to make provision for the recovery of certain amounts paid by way of multiple or punitive damages in compliance with judgments delivered in courts outside the Republic; and to provide for incidental matters.

*(English text signed by the State President.)  
(Assented to 19 June 1984.)*

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

1. The following sections are hereby inserted in the Protection of Businesses Act, 1978, after section 1:

Insertion of sections 1A, 1B and 1C in Act 99 of 1978.

- 5 "Prohibition of recognition or enforcement of certain judgments. **1A. (1)** No judgment delivered by a court outside the Republic, arising from any act or transaction referred to in section 1 (3) and directing the payment of multiple or punitive damages shall be recognized or enforced in the Republic, irrespective of whether or not the Minister has in terms of section 1 granted his consent as contemplated in that section.
- 10 (2) In this section and in section 1B 'multiple or punitive damages' means that part of the amount awarded as damages which exceeds the amount determined by the court as compensation for the damage or loss actually sustained by the person to whom the damages have been awarded.
- 15 **1B. (1) (a)** A qualifying defendant against whom a judgment for multiple or punitive damages has been delivered by a court outside the Republic, whether before or after the commencement of the Protection of Businesses Amendment Act, 1984, and who in compliance with that judgment has paid an amount to the person in whose favour the judgment has been delivered or to another person as against whom the qualifying defendant is liable to make a contribution in respect of such damages, may recover from the person in whose favour the judgment was delivered so much of the amount paid as exceeds the part attributable to compensation for damage or loss actually sustained.
- 20 Recovery of certain amounts paid by way of multiple or punitive damages. **(b)** The 'part' referred to in paragraph (a) shall be deemed to be that part of the amount paid which bears to the whole of it the same proportion as
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## PROTECTION OF BUSINESSES AMENDMENT ACT, 1984

Act No. 71, 1984

the amount assessed by the court which delivered the judgment as compensation for damage or loss actually sustained bears to the whole of the damages awarded.

5 (2) This section shall not apply—

(a) if the qualifying defendant at the material time carried on business outside the Republic and the proceedings in respect of which the judgment was given related to activities exclusively carried on outside the Republic in connection with that business; or

10 (b) if the qualifying defendant was at the material time ordinarily resident outside the Republic or, in the case of a juristic person, had at that time its principal place of business outside the Republic.

15 (3) In the application of subsection (1) an amount obtained by execution against the property of the qualifying defendant, or against the property of any company the interests of which are according to a judgment referred to in that subsection integrated with the interests of the qualifying defendant to an extent which requires that an act or omission of that company be regarded in law as an act or omission of the qualifying defendant also, shall be deemed to be an amount paid by the qualifying defendant, and in such application any person upon whom devolved, by succession or otherwise, the rights of the person in whose favour the judgment was delivered or of any person who is entitled to a contribution in respect of such damages, shall be deemed to be the person in whose favour the judgment was delivered or, as the case may be, the person who is entitled to such contribution.

20 (4) Where the person in whose favour a judgment for multiple or punitive damages was delivered is a company, any other company which is the controlling company or a controlled company of the first-mentioned company or is a company which is controlled by the same controlling company as controls the first-mentioned company, shall be liable, jointly and severally, together with the first-mentioned company, in respect of any liability imposed upon the first-mentioned company as contemplated in subsection (1).

25 (5) In this section, unless the context otherwise indicates—

30 'controlled company' means a controlled company as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973), and 'control' has a corresponding meaning;

35 'controlling company' means a controlling company as defined in section 1 of the Companies Act, 1973;

40 'material time' means the time when the proceedings were instituted pursuant to which a judgment for multiple or punitive damages was delivered;

45 'qualifying defendant' means—

50 (a) a natural person who at the material time was domiciled or ordinarily resident in the Republic; or

55 (b) a juristic person who at the material time was incorporated in the Republic; or

60 (c) any person who at the material time carried on business in the Republic.

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PROTECTION OF BUSINESSES AMENDMENT ACT, 1984

Act No. 71, 1984

Saving. 1C. The provisions of section 1A shall not derogate from—  
(a) the provisions of section 1;  
5 (b) the power of the defendant to avail himself of any defence which he may by law raise in any action for the recognition or enforcement of a judgment of a court outside the Republic."

2. This Act shall be called the Protection of Business Amend- Short title.  
ment Act, 1984.