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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 2300.

16 October 1987

No. 2300.

16 Oktober 1987

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

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

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

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:—

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, interrogatory, commission rogatoire, [or] letters of request or any other request delivered, given or issued or emanating from outside the Republic and 10 arising from any act or transaction contemplated in subsection (3), shall be enforced in the Republic;”;

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