

STATUTES OF THE REPUBLIC OF SOUTH AFRICA – TRADE AND INDUSTRY
Export Credit and Foreign Investments Insurance Act,
No. 78 of 1957

STATUTES OF THE REPUBLIC OF SOUTH AFRICA-TRADE AND INDUSTRY
**EXPORT CREDIT AND FOREIGN INVESTMENTS RE-INSURANCE
AMENDMENT ACT**

No. 78 OF 1957

As amended by

Export Credit Re-insurance Amendment Act No. 66 of 1961

Export Credit Re-insurance Amendment Act No. 88 of 1962

Export Credit Re-insurance Amendment Act No. 75 of 1971

Export Credit Re-insurance Amendment Act No. 81 of 1981

Transfer of Powers and Duties of the State President Act No. 97 of 1986
[with effect from 3 October, 1986-see the Constitutional Law]

Export Credit Re-insurance Amendment Act No. 97 of 1988

General Law Amendment Act, No. 49 of 1996
[with effect from 4 October, 1996-see title General Law Amendment Acts]

Export Credit Re-insurance Amendment Act No. 9 of 2001

Export Credit Re-insurance Amendment Act No. 34 of 2002

GENERAL NOTE

In terms of section 10 of Act No. 9 of 2001, the word "re-insurance" is substituted, wherever it occurs, by the word "insurance".

In terms of section 6(a) of Act No. 34 of 2002, the expression "contract of insurance" is substituted, wherever it occurs, with the expression "policy of insurance".

In terms of section 6(b) of Act No. 34 of 2002, the expression "Export Credit Agency" is substituted, wherever it occurs, by the word "Corporation".

In terms of section 6(c) of Act No. 34 of 2002, the words "he", "him", "his" and "sub-section" is substituted, wherever it occurs, with the words "he or she", "his or her" and "subsection" respectively.

To promote trade with countries outside the Republic by providing for the insurance on behalf of the Government of the Republic of contracts in connection with export transactions, investments and loans or similar facilities connected with such transactions; and to provide for matters connected therewith.

[Long title amended by s.7 (b) of Act No. 88 of 1962 and substituted by s.6 of Act no. 81 of 1981 and by s.12 of Act No. 9 of 2001.]

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1. Definition.--(1) In this Act, unless the context otherwise

"buyer" means a person carrying on business outside the Republic;

"contract of insurance"

"Corporation" means the Export Credit Insurance Corporation of South Africa Limited or its lawful successor in title;

"Export Credit Agency"

"Fund" means the Reserve Fund established under section 5;

"Investment" means any share or interest in any business undertaking in any country outside the Republic which could promote the exports of the Republic to or the economic development of that country, and which is acquired with the object of earning income;

"Minister" means the Minister of Trade and Industry;

"person" includes any company, association, partnership, individual, government agency or semi-government agency;

"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;

"the Territory"

"the Republic"

"this Act" includes any regulation made thereunder;

"trade with countries outside the Republic" includes any transaction (including a transaction for the rendering of service) involving a consideration in money or money's worth accruing from a person carrying on business in the Republic and any consignment of goods by a person carrying on business in the Republic to a person carrying on business or other activities outside the Republic with a view to such a transaction.

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(2) for the purposes of this Act-

- (c) a sale of goods to a person who intends to export such goods from the Republic; and
- (d) the sale and consignment of goods (including a transaction for the rendering of a service) from a place or source outside the Republic, if the Minister, in consultation with the Minister of Finance, determines that such sale, consignment or transaction is beneficial for the export trade of the Republic.

Shall be deemed to be transaction in the course of trade with a country outside the Republic in terms of section 2.

[Sub-s.(2) substituted by s.1 (1) (b) of Act No. 75 of 1971.]

2. **Agreement of insurance.**- (1) The Minister, in consultation with the Minister of Finance, shall enter into an agreement with the Corporation with the object of insuring on behalf of the Government in terms of policies of insurance and 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-

- (a) acts or transactions in the course of trade with countries outside the Republic; or
- (b) investments in countries outside the Republic; or
- (c) any loan or similar facility connected with any such act, transaction or investment and granted by a person carrying on business in the Republic to any person,

[Para. (c) Substituted by s.2 of Act No. 27 of 1988.]

for any of the following causes-

- (i) the operation of a law, or of an order, a decree or regulation having the force of law, which-
 - (aa) prevents, restricts or controls the importation of goods into the buyer's country; or
 - (bb) prevents, restricts or controls the transfer from the country in which the investment was made to the Republic of dividends and interest in respect of the investment;
- (ii) nationalization, expropriation or confiscation;

[Para. (ii) Substituted by s.2 of Act No. 9 of 2001.]

- (iii) the occurrence of war;
- (iv) the occurrence of hostilities, civil war, rebellion, revolution, insurrection, or other disturbance outside the Republic;
- (ivA) the failure to repay a loan negotiated for purposes of entering into a trading transaction with a person in a country outside the Republic, or to repay a loan negotiated in connection with such transfer; or

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- (v) such other causes as the Corporation deems to arise from risks not normally insurable.

[Sub-s. (1) amended by s. 2 (d) of Act No. 9 of 2001 and by s. 2 (a) of Act No. 34 of 2002. Para. (v) substituted by s.2 of Act No. 9 of 2001.]

(2) The Corporation 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.

[Sub-s (2) added by s.2 of Act No. 9 of 2001.]

(3) Without detracting in any way from the Minister's power to determine through the agreement contemplated in subsection 1 the manner in which the Corporation shall conduct its business, the Minister may appoint members of the Board and the Chief Executive Officer of the Corporation.

[Sub-s (3) added by s.2 (d) of Act No. 9 of 2001 and substituted by s.2 (b) of Act No. 34 of 2002.]

(4) The members and Chief Executive Officer contemplated in subsection (3) shall be suitable qualified to perform the functions of the Corporation.

[Sub-s (4) added by s.2 (d) of Act No. 9 of 2001.]

3. Percentage cover. –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 percent of the total value of the contract or the investment in question, as the case may be.

[s. 4 substituted by s. 4 of Act No. 9 of 2001.]

4. Premiums. –The rate of premium for any policy of insurance shall be fixed by the Corporation, having regard to the various factors which have a bearing on the risks covered by the policy and to the cost of administering this Act.

[Sub-s (4) added by s.2 (d) of Act No. 9 of 2001 and by s. 4 of Act No. 34 of 2002.]

5. Financial arrangements. –(1) The Corporation shall establish a Reserve Fund into which shall be paid moneys appropriated by Parliament for the purpose of this Act and premiums and other moneys accruing to the Corporation under contracts of insurance.

[Sub-s (1) substituted by s. 3 (a) of Act No. 81 of 1981, by s. 3 (a) of Act No. 27 of 1988 and by s. 5 (a) of Act No. 9 of 2001.]

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(2) There shall be paid out of the Fund:

- (a) all moneys required for the discharge of claims or other liabilities under contracts or insurance;
- (b) any remuneration and allowances referred to in sections 7 and 8;

[Para (b) substituted by s. 5 (b) of Act No. 9 of 2001.]

- (c) such other costs of administering this Act as may be determined by the Minister in consultation with the Corporation.

[Para (c) substituted by s. 5 (b) of Act No. 9 of 2001.]

- (3) The Corporation 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 suitably invested by the Corporation in accordance with the requirements of the Short-term Insurance Act, 1998 (Act No. 53 of 1998).

[Sub-s (3) substituted by s. 3 of Act No. 81 of 1981, by s. 3 (b) of Act No. 27 of 1988 and by s. 5 (c) of Act No. 9 of 2001.]

- (4) (a) The Corporation may from time to time obtain advances from the Minister in order to meet temporary deficits in the Fund.

[Para (a) substituted by s. 5 (d) of Act No. 9 of 2001.]

- (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.

[Para (b) substituted by s. 5 (d) of Act No. 9 of 2001.]

(c)

[Para © deleted by s. 5 (e) of Act No. 9 of 2001.]

(d)

[Sub-s (4) added by s.3 of Act No. 88 of 1962. Para (d) deleted by s. 5 (e) of Act No. 9 of 2001.]