



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 gegee 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.

Wet No. 71, 1984

WYSIGINGSWET OP DIE BESKERMING VAN ONDERNEMINGS,
1984**ALGEMENE VERDUIDELIKENDE NOTA:**

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.

WET

Tot wysiging van die Wet op die Beskerming van Ondernemings, 1978, ten einde die erkenning of afdwinging in die Republiek van vonnisse van houe buite die Republiek wat die betaling van veelvoudige of bestraffende skadevergoeding gelas, te verbied; en voorsiening te maak vir die terugvordering van sekere bedrae betaal by wyse van veelvoudige of bestraffende skadevergoeding ter voldoening aan vonnisse; gelewer in houe buite die Republiek; en om voorsiening te maak vir bykomstige aangeleenthede.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 19 Junie 1984.)

DAAR WORD BEPAAL deur die Staatspresident en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

1. Die volgende artikels word hierby in die Wet op die Beskerming van Ondernemings, 1978, na artikel 1 ingevoeg:

Invoeging van
artikels 1A,
1B en 1C in
Wet 99 van 1978.

“Verbod op
erkenning of
afdwinging
van sekere
vonnisse.

1A. (1) Geen vonnis wat deur 'n hof buite die Republiek gelewer is, wat voortspruit uit 'n handeling of transaksie in artikel 1 (3) vermeld en wat die betaling van veelvoudige of bestraffende skadevergoeding gelas, word in die Republiek erken of afdwinging nie, ongeag of die Minister ingevolge artikel 1 sy toestemming soos in daardie artikel beoog, verleen het al dan nie.

(2) In hierdie artikel en in artikel 1B beteken 'veelvoudige of bestraffende skadevergoeding' daardie gedeelte van die bedrag wat as skadevergoeding toegeken is wat die bedrag oorskry wat deur die hof bepaal is as vergoeding van die verlies of skade werklik gelyk deur die persoon aan wie skadevergoeding toegeken is.

Terugvordering
van sekere be-
drae by wyse
van veelvoudige
of bestraf-
fende skade-
vergoeding
betaal.

1B. (1) (a) 'n Bevoegde verweerder teen wie 'n vonnis vir veelvoudige of bestraffende skadevergoeding deur 'n hof buite die Republiek gelewer is, hetsy voor of na die inwerkingtreding van die Wysigingswet op die Beskerming van Ondernemings, 1984, en wat ter voldoening aan daardie vonnis aan die persoon ten gunste van wie die vonnis gelewer is of aan 'n ander persoon teenoor wie die bevoegde verweerder ten opsigte van daardie skadevergoeding bydraeplichtig is, 'n bedrag betaal het, kan van die persoon ten gunste van wie die vonnis gelewer is, soveel van die betaalde bedrag terugvorder as wat die gedeelte wat toeskryfbaar is aan vergoeding vir verlies of skade werklik gelyk, oorskry.

(b) Die 'gedeelte' in paragraaf (a) vermeld, word geag daardie gedeelte van die betaalde bedrag te wees wat tot die geheel van die betaalde bedrag in dieselfde verhouding staan as wat die bedrag

PROTECTION OF BUSINESSES AMENDMENT ACT, 1984

Act No. 71, 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 enforce-
ment 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

Recovery of
certain
amounts paid
by way of
multiple or
punitive dam-
ages.

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.

25

30

(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

35

wat die hof wat die vonnis gelewer het, bepaal het as vergoeding vir verlies of skade werklik gely, staan tot die geheel van die skadevergoeding wat toegeken is.

(2) Hierdie artikel is nie van toepassing nie—

- (a) indien die bevoegde verweerder op die wesenlike tyd buite die Republiek 'n besigheid gedryf het en die geding ten opsigte waarvan die vonnis gelewer is betrekking gehad het op bedrywighede wat buite die Republiek slegs in verband met daardie besigheid verrig is; of
- (b) indien die bevoegde verweerder op die wesenlike tyd gewoonlik buite die Republiek woonagtig was of, in die geval van 'n regspersoon, op daardie tyd sy vernaamste besigheidsplek buite die Republiek gehad het.

(3) By die toepassing van subartikel (1) word 'n bedrag wat verkry is deur eksekusie teen die goed van die bevoegde verweerder of teen die goed van 'n maatskappy waarvan die belange volgens 'n beslissing in daardie subartikel vermeld met die belange van die bevoegde verweerder geïntegreer is in 'n mate wat vereis dat 'n handeling of versuim van daardie maatskappy regtens beskou moet word as 'n handeling of versuim ook van die bevoegde verweerder, geag 'n bedrag te wees wat deur die bevoegde verweerder betaal is, en by sodanige toepassing word 'n persoon op wie die regte van die persoon ten gunste van wie die vonnis verleen is, of van enige persoon wat op 'n bydrae ten opsigte van sodanige skadevergoeding geregtig is, deur erfopvolging of andersins oorgegaan het, die persoon ten gunste van wie die vonnis gelewer is of, na gelang van die geval, die persoon wat op so 'n bydrae geregtig is, geag te wees.

(4) Waar die persoon ten gunste van wie die vonnis vir veelvoudige of bestraffende skadevergoeding gelewer is, 'n maatskappy is, is enige ander maatskappy wat die beheerende maatskappy of 'n beheerde maatskappy van eersgenoemde maatskappy is, of 'n maatskappy is wat deur dieselfde beheerende maatskappy wat eersgenoemde maatskappy beheer, beheer word, gesamentlik en afsonderlik aanspreeklik, tesame met eersgenoemde maatskappy, ten opsigte van enige verpligting wat op eersgenoemde maatskappy soos in subartikel (1) beoog, opgelê is.

(5) In hierdie artikel, tensy uit die samehang anders blyk, beteken—

'beheerde maatskappy' 'n beheerde maatskappy soos omskryf in artikel 1 van die Maatskappywet, 1973 (Wet No. 61 van 1973), en het 'beheer', wanneer dit in die lydende vorm gebruik word, 'n ooreenstemmende betekenis;

'beherende maatskappy' 'n beherende maatskappy soos omskryf in artikel 1 van die Maatskappywet, 1973, en het 'beheer' 'n ooreenstemmende betekenis;

'bevoegde verweerder'—

(a) 'n natuurlike persoon wat op die wesenlike tyd in die Republiek gedomisileer of gewoonlik woonagtig was; of

(b) 'n regspersoon wat op die wesenlike tyd in die Republiek geïnkorporeer was; of

(c) enige persoon wat op die wesenlike tyd in die Republiek besigheid gedryf het;

'wesenlike tyd' die tyd waarop die geding ingestel is uit hoofde waarvan 'n vonnis vir veelvoudige of bestraffende skadevergoeding gelewer is.

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.

65

Wet No. 71, 1984

WYSIGINGSWET OP DIE BESKERMING VAN ONDERNEMINGS,
1984

Vorbehoud. 1C. Die bepalings van artikel 1A doen nie af-
breuk—
(a) aan die bepalings van artikel 1 nie;
(b) die bevoegdheid van die verweerder om enige
verweer te opper wat hy regtens in 'n aksie om 5
die erkenning of afdwinging van 'n vonnis van 'n
hof buite die Republiek kan opper nie.”.

Kort titel.

2. Hierdie Wet heet die Wysigingswet op die Beskerming van
Ondernemings, 1984.

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;
- (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.

5

2. This Act shall be called the Protection of Business Amendment Act, 1984. Short title.

