



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 606 Cape Town, 15 December 2015 **No. 39514**
Kaapstad,

THE PRESIDENCY

No. 1236 15 December 2015

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

Act No. 22 of 2015: Protection of Investment Act, 2015

DIE PRESIDENSIE

No. 1236 15 Desember 2015

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

Wet No 22 van 2015: Wet op Beskerming van Beleggings, 2015



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

(English text signed by the President)
(Assented to 13 December 2015)

ACT

To provide for the protection of investors and their investments; to achieve a balance of rights and obligations that apply to all investors; and to provide for matters connected therewith.

PREAMBLE

CONSCIOUS of the obligation to protect and promote the rights enshrined in the Constitution;

RECOGNISING the importance that investment plays in job creation, economic growth, sustainable development, and the well-being of the people of South Africa;

AFFIRMING that the State is committed to maintaining an open and transparent environment for investments;

DESIROUS of promoting investment by creating an environment that facilitates processes that may affect investments;

CONSIDERING the responsibility of the government to provide a sound legislative framework for the protection of all investments, including foreign investments, pursuant to constitutional obligations;

SECURING a balance of rights and obligations of investors to increase investment in the Republic;

EMPHASISING the rights related to access to just administrative action, access to justice, access to information and all other rights set out in the Bill of Rights;

RECOGNISING the obligation to take measures to protect or advance persons, or categories of persons, historically disadvantaged in the Republic due to discrimination;

ACKNOWLEDGING that investment must be protected, in accordance with the law, administrative justice and access to information;

REAFFIRMING the government's right to regulate in the public interest in accordance with the law;

COGNISANT of the government's commitment in respect of international law to ensure that human rights, fundamental freedoms and protection of peoples' resources are adequately protected,

(Engelse teks deur die President geteken)
(Goedgekeur op 13 Desember 2015)

WET

Ten einde voorsiening te maak vir beskerming van beleggers en hul beleggings; om 'n balans van regte en verpligtinge te behaal wat op alle beleggers van toepassing is; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

AANHEF

BEWUS daarvan dat die regte wat in die Grondwet verskans is, beskerm en bevorder moet word;

IN DIE BESEF van die belangrike rol wat belegging in werkskepping, ekonomiese groei, volhoubare ontwikkeling, en die welstand van die mense van Suid-Afrika speel;

TER BEVESTIGING dat die Staat verbind is tot die handhawing van 'n oop en deursigtige omgewing vir beleggings;

MET DIE BEGEERTE om beleggings te bevorder deur 'n omgewing te skep wat prosesse fasiliteer wat beleggings mag raak;

MET INAGNEMING van die regering se verantwoordelikheid om 'n gesonde wetgewende raamwerk te voorsien vir die beskerming van alle beleggings, met inbegrip van buitelandse beleggings, in navolging van grondwetlike verpligtinge;

TER VERSEKERING van 'n balans van regte en verpligtinge van beleggers om belegging in die Republiek te verhoog;

TER BEKLEMTONING van die regte wat verband hou met toegang tot administratiewe optrede en alle ander regte vervat in die Handves van Menseregte;

IN DIE BESEF dat dit vereis word om stappe te doen om persone, of kategorieë persone, wat histories in die Republiek weens diskriminasie benadeel is, te beskerm of te bevoordeel;

TER ERKENNING dat beleggings volgens wet, administratiewe reg en toegang tot inligting beskerm moet word;

TER HERBEVESTIGING van die regering se reg om die openbare belang volgens wet te reguleer;

BEWUS van die regering se verbintenis ten opsigte van die volkereg om te verseker dat menseregte, grondliggende vryhede en beskerming van mense se hulpbronne voldoende beskerming geniet,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS

Sections

1. Definitions	5
2. Investment	
3. Interpretation of Act	
4. Purpose of Act	
5. Application of Act	
6. Fair administrative treatment	10
7. Establishment	
8. National treatment	
9. Physical security of property	
10. Legal protection of investment	
11. Transfer of funds	15
12. Right to regulate	
13. Dispute resolution	
14. Regulations	
15. Transitional arrangements	
16. Short title and commencement	20

Definitions

1. In this Act, unless the context indicates otherwise—
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Department**” means the Department responsible for trade and industry;
- “**dispute**” means a claim by an investor, instituted in accordance with section 13, 25
that the government has allegedly breached the protection provided for in this Act;
- “**enterprise**” means any natural person or juristic person, whether incorporated or
unincorporated;
- “**government**” means the government of the Republic of South Africa;
- “**investment**” has the meaning assigned under section 2; 30
- “**investor**” means an enterprise making an investment in the Republic regardless
of nationality;
- “**measure**” refers to binding governmental action directly affecting an investor or
its investment, and includes laws, regulations and administrative action;
- “**Minister**” means the Minister responsible for trade and industry; 35
- “**organ of state**” means an organ of state as defined in section 239 of the
Constitution;
- “**prescribe**” means prescribe by regulation;
- “**regulation**” means a regulation made under this Act;
- “**Republic**” means the Republic of South Africa; and 40
- “**this Act**” means the Protection of Investment Act, 2015.

Investment

2. (1) For the purpose of this Act, an investment is—
- (a) any lawful enterprise established, acquired or expanded by an investor in
accordance with the laws of the Republic, committing resources of economic 45
value over a reasonable period of time, in anticipation of profit;
- (b) the holding or acquisition of shares, debentures or other ownership
instruments of such an enterprise; or
- (c) the holding, acquisition or merger by such an enterprise with another
enterprise outside the Republic to the extent that such holding, acquisition or 50
merger with another enterprise outside the Republic, has an effect on an
investment contemplated by paragraphs (a) and (b) in the Republic;

WORD DAAR DERHALWE BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

INDELING VAN ARTIKELS

Artikels

1.	Woordomskrywing	5
2.	Belegging	
3.	Uitleg van Wet	
4.	Doel van Wet	
5.	Toepassing van Wet	
6.	Regverdige administratiewe behandeling	10
7.	Instelling	
8.	Nasionale behandeling	
9.	Fisiese veiligheid van eiendom	
10.	Regsbeskerming van beleggings	
11.	Oordrag van fondse	15
12.	Reg om te reguleer	
13.	Geskilbeslegting	
14.	Regulasies	
15.	Oorgangsbepalings	
16.	Kort titel en inwerkingtreding	20

Woordomskrywing

1. In hierdie Wet, tensy die samehang anders aandui, beteken—
- “**belegger**” ’n onderneming wat ’n belegging in die Republiek maak, ongeag die nasionaliteit;
 - “**belegging**” dit wat kragtens artikel 2 toegeskryf word; 25
 - “**Departement**” die Departement verantwoordelik vir handel en nywerheid;
 - “**geskil**” ’n aanspraak deur ’n belegger, ooreenkomstig artikel 13 ingestel, dat die regering die beskerming waarvoor hierdie Wet voorsiening maak, na bewering verbreek het;
 - “**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996; 30
 - “**hierdie Wet**” die Wet op Beskerming van Beleggings, 2015;
 - “**maatreël**” ook ’n bindende regeringsaksie wat ’n belegger of sy belegging direk raak, en sluit in wette, regulasies en administratiewe aksie;
 - “**Minister**” die Minister verantwoordelik vir handel en nywerheid;
 - “**onderneming**” ’n natuurlike persoon of regspersoon, hetsy ingelyf of oningelyf; 35
 - “**regering**” die regering van die Republiek van Suid-Afrika;
 - “**regulasie**” ’n regulasie kragtens hierdie Wet uitgevaardig;
 - “**Republiek**” die Republiek van Suid-Afrika;
 - “**staatsorgaan**” ’n staatsorgaan soos omskryf in artikel 239 van die Grondwet; en
 - “**voorskryf**” by regulasie voorskryf. 40

Belegging

2. (1) By die toepassing van hierdie Wet, is ’n belegging—
- (a) enige wettige onderneming ingestel, verkry of uitgebrei deur ’n belegger ooreenkomstig die wette van die Republiek, waar hulpbronne oor ’n redelike tydperk toegewy word met die oog op wins; 45
 - (b) die hou of verkryging van aandele, skuldbriewe of ander eienaarskap-instrument van so ’n onderneming; of
 - (c) die hou, verkryging of samesmelting deur so ’n onderneming met ’n ander onderneming buite die Republiek tot die mate dat sodanige hou, verkryging of samesmelting met ’n ander onderneming buite die Republiek ’n uitwerking 50 het op ’n belegging, in paragrafe (a) en (b) bedoel, in die Republiek.

(2) For the purposes of the definition of “investment”, an enterprise may possess assets such as, amongst others—

- (a) shares as defined by the Companies Act, 2008 (Act No. 71 of 2008), stocks, debentures, securities as defined in the Financial Markets Act, 2012 (Act No. 19 of 2012), or other equity instruments of the enterprise or another enterprise; 5
- (b) a debt security of another enterprise;
- (c) loans to an enterprise;
- (d) movable or immovable property or other property rights such as mortgages, liens or pledges; 10
- (e) claims to money or to any performance under contract having a financial value;
- (f) copyrights, know how, goodwill, or intellectual property rights such as patents, trademarks, industrial designs and trade names, to the extent that they are recognised under the law of South Africa; 15
- (g) returns such as profits, dividends, royalties or income yielded by an investment; or
- (h) rights or concessions conferred by law or under contract, including licenses to cultivate, extract or exploit natural resources.

Interpretation of Act 20

3. This Act must be interpreted and applied in a manner that is consistent with—

- (a) its purposes as contemplated by section 4;
- (b) the Constitution, including—
 - (i) the interpretation of the Bill of Rights contemplated in section 39 of the Constitution; 25
 - (ii) customary international law contemplated in section 232 of the Constitution; and
 - (iii) international law contemplated in section 233 of the Constitution; and
- (c) any relevant convention or international agreement to which the Republic is or becomes a party. 30

Purpose of Act

4. The purpose of this Act is to—

- (a) protect investment in accordance with and subject to the Constitution, in a manner which balances the public interest and the rights and obligations of investors; 35
- (b) affirm the Republic’s sovereign right to regulate investments in the public interest; and
- (c) confirm the Bill of Rights in the Constitution and the laws that apply to all investors and their investments in the Republic.

Application of Act 40

5. This Act applies to all investments in the Republic which are made in accordance with the requirements set out in section 2.

Fair administrative treatment

6. (1) The government must ensure administrative, legislative and judicial processes do not operate in a manner that is arbitrary or that denies administrative and procedural justice to investors in respect of their investments as provided for in the Constitution and applicable legislation. 45

(2) Administrative decision-making processes must include the right to be given written reasons and administrative review of the decision consistent with section 33 of the Constitution and applicable legislation. 50

(3) Investors must, in respect of their investments, have access to government-held information in a timely fashion and consistent with section 32 of the Constitution and applicable legislation.

- (2) By die toepassing van die omskrywing van “belegging” mag ’n onderneming bates besit, soos—
- (a) aandele omskryf in die Maatskappywet, 2008 (Wet No. 71 van 2008), effekte, skuldbriewe, sekuriteite soos omskryf in die Wet op Finansiële Markte, 2012 (Wet No. 19 van 2012), of ander ekwiteitsinstrumente van die onderneming of ’n ander onderneming; 5
 - (b) ’n skuldsekuriteit van ’n ander onderneming;
 - (c) lenings aan ’n onderneming;
 - (d) roerende of onroerende goedere of ander goederereg soos verbande, retensieregte of pande; 10
 - (e) eise op geld of op enige prestasie onder kontrak wat ’n finansiële waarde het;
 - (f) kopiereg, vernuf, werfkrag of intellektuele goederereg soos patente, handelsmerke, nywerheidsontwerpe en handelsname, tot die mate waartoe hulle onder die Suid-Afrikaanse reg erken word;
 - (g) opgawes soos winste, dividende, hereregte of inkomste deur belegging verkry; of 15
 - (h) regte of konsessies wat regtens of by kontrak toegeken word, met inbegrip van lisensies om natuurlike bronne te kweek, te ontgin of te bewerk.

Uitleg van Wet

3. Hierdie Wet word uitgelê en toegepas op ’n wyse wat bestaanbaar is met— 20
- (a) sy doeleindes soos in artikel 4 bedoel;
 - (b) die Grondwet, met inbegrip van—
 - (i) die uitleg van die Handves van Regte bedoel in artikel 39 van die Grondwet;
 - (ii) volkeregtelike gewoontereg in artikel 232 van die Grondwet beoog; en 25
 - (iii) volkereg in artikel 233 van die Grondwet beoog; en
 - (c) enige tersaaklike konvensie of internasionale ooreenkoms waartoe die Republiek ’n party is of word.

Doel van Wet

4. Die doel van hierdie Wet is om— 30
- (a) beleggings ooreenkomstig en behoudens die Grondwet te beskerm, op ’n wyse wat die openbare belang en die regte en verpligtinge van beleggers balanseer;
 - (b) die Republiek se soewereine reg om beleggings in die openbare belang te reguleer, te bevestig; en 35
 - (c) die Handves van Regte in die Grondwet en die wette wat op alle beleggers en hul beleggings in die Republiek van toepassing is, te bevestig.

Toepassing van Wet

5. Hierdie Wet is van toepassing op alle beleggings in die Republiek wat ooreenkomstig vereistes in artikel 2 uiteengesit, gemaak is. 40

Regverdige administratiewe behandeling

6. (1) Die regering moet verseker dat administratiewe, wetgewende en regterlike prosesse nie bedryf word op ’n wyse wat arbitrêr is of wat beleggers ten opsigte van hul beleggings administratiewe en prosedurele geregtigheid ontsê nie, soos voorvoorsiening gemaak in die Grondwet en toepaslike wetgewing. 45
- (2) Administratiewe besluitnemingsprosesse moet die reg insluit op geskrewe redes vir en administratiewe hersiening van die besluit, behoudens artikel 33 van die Grondwet en toepaslike wetgewing.
- (3) Beleggers moet, wat hul beleggings betref, op ’n tydige wyse en in ooreenstemming met artikel 32 van die Grondwet en toepaslike wetgewing toegang hê tot 50
- regeringsinligting.

(4) Subject to section 13(4), investors must, in respect of their investments, have the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum consistent with section 34 of the Constitution and applicable legislation.

5

Establishment

7. (1) All investments must be established in compliance with the laws of the Republic.

(2) This Act does not create a right for a foreign investor or prospective foreign investor to establish an investment in the Republic.

10

National treatment

8. (1) Foreign investors and their investments must not be treated less favourably than South African investors in like circumstances.

(2) For the purposes of this section, “like circumstances” means the requirement for an overall examination of the merits of the case by taking into account all the terms of a foreign investment, including the—

15

- (a) effect of the foreign investment on the Republic, and the cumulative effects of all investments;
- (b) sector that the foreign investments are in;
- (c) aim of any measure relating to foreign investments;
- (d) factors relating to the foreign investor or the foreign investment in relation to the measure concerned;
- (e) effect on third persons and the local community;
- (f) effect on employment; and
- (g) direct and indirect effect on the environment.

20

25

(3) The examination referred to in subsection (2) must not be limited to or be biased towards any one factor.

(4) Subsection (1) must not be interpreted in a manner that will require the Republic to extend to foreign investors and their investments the benefit of any treatment, preference or privilege resulting from—

30

- (a) taxation provisions in any international agreement or arrangement or any law of the Republic;
- (b) government procurement processes;
- (c) subsidies or grants provided by the government or any organ of state;
- (d) any law or other measure, the purpose of which is to promote the achievement of equality in South Africa or designed to protect or advance persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability in the Republic;
- (e) any law or other measure, the purpose of which is to promote and preserve cultural heritage and practices, indigenous knowledge and biological resources related thereto, or national heritage; or
- (f) any special advantages accorded in the Republic by development finance institutions established for the purpose of development assistance or the development of small and medium businesses or new industries.”.

35

40

Physical security of property

45

9. The Republic must accord foreign investors and their investments a level of physical security as may be generally provided to domestic investors in accordance with minimum standards of customary international law and subject to available resources and capacity.

Legal protection of investment

50

10. Investors have the right to property in terms of section 25 of the Constitution.

(4) Behoudens artikel 13(4) moet beleggers ten opsigte van hul beleggings die reg hê om enige geskil, wat deur die toepassing van die reg bygelê kan word, in 'n regverdige openbare verhoor voor 'n hof te laat beslis of, waar gepas, deur 'n ander onafhanklike en onpartydige tribunal of forum bestaanbaar met artikel 34 van die Grondwet en toepaslike wetgewing.

5

Vestiging

7. (1) Alle beleggings moet in ooreenstemming met die wette van die Republiek gevestig word.

(2) Hierdie Wet skep nie 'n reg vir 'n buitelandse belegger of voornemende buitelandse belegger om 'n belegging in die Republiek te vestig nie.

10

Nasionale behandeling

8. (1) Buitelandse beleggers en hul beleggings moet nie minder gunstig behandel word as Suid-Afrikaanse beleggers in soortgelyke omstandighede nie.

(2) By die toepassing van hierdie artikel, beteken "soortgelyke omstandighede" die vereiste vir 'n oorkoepelende bestudering van die meriete van die saak deur al die voorwaardes van 'n buitelandse belegging in ag te neem, met inbegrip van die—

15

- (a) uitwerking van die buitelandse belegging op die Republiek, en die kumulatiewe gevolge van alle beleggings;
- (b) sektor waarin die buitelandse beleggings is;
- (c) doel van enige maatreef wat met buitelandse beleggings verband hou;
- (d) faktore wat met die buitelandse belegger of die buitelandse belegging verband hou betreffende die betrokke maatreef;
- (e) uitwerking op derde persone en die plaaslike gemeenskap;
- (f) uitwerking op indiensneming; en
- (g) direkte en indirekte uitwerking op die omgewing.

25

(3) Die bestudering in subartikel (2) bedoel moet nie beperk wees tot of bevooroordeel wees teenoor enige enkele faktor nie.

(4) Subartikel (1) word nie uitgelê op 'n wyse wat van die Republiek sal vereis om aan buitelandse beleggers en hul beleggings die voordeel te verleen nie van enige behandeling, voorkeur of voorreg wat voortspuit uit—

30

- (a) belastingsbepalings in enige internasionale ooreenkoms of reëling of enige wet van die Republiek;
- (b) verkrygingsprosesse in die regering;
- (c) subsidies of toelaes deur die regering of enige staatsorgaan voorsien;
- (d) enige wet of ander maatreef, wat ten doel het om die bereiking van gelykheid in Suid-Afrika te bevorder of wat ontwerp is om persone, of kategorieë van persone, wat histories benadeel is deur onregverdige diskriminasie op grond van ras, geslag of gestremdheid in die Republiek, te beskerm of te bevorder; in Suid-Afrika te bevorder of wat ontwerp is om persone, of kategorieë van persone, wat histories benadeel is deur onregverdige diskriminasie op grond van ras, geslag of gestremdheid in die Republiek, te beskerm of te bevorder;
- (e) enige wet of ander maatreef wat ten doel het om kulturele erfenis en praktyke, inheemse kennis en biologiese hulpbronne wat daarmee verband hou, of nasionale erfenis, te bevorder en te bewaar; of
- (f) enige spesiale voordele wat in die Republiek vergun is deur ontwikkelingsfinansieringsinstellings ingestel met die doel om ontwikkelingsbystand te verleen of om klein sake en medium sake of nuwe nywerhede te ontwikkel.

40

Fisiese veiligheid van eiendom

45

9. Die Republiek moet buitelandse beleggers en hul beleggings 'n vlak van veiligheid gee wat oor die algemeen aan binnelandse beleggers gegee kan word, behoudens beskikbare hulpbronne en kapasiteit.

Regsbeskerming van beleggings

10. Beleggers het die reg op eiendom ingevolge artikel 25 van die Grondwet.

50

Transfer of funds

11. A foreign investor may, in respect of an investment, repatriate funds subject to taxation and other applicable legislation.

Right to regulate

12. (1) Notwithstanding anything to the contrary in this Act, the government or any organ of state may, in accordance with the Constitution and applicable legislation, take measures, which may include—

- (a) redressing historical, social and economic inequalities and injustices;
- (b) upholding the values and principles espoused in section 195 of the Constitution; 10
- (c) upholding the rights guaranteed in the Constitution;
- (d) promoting and preserving cultural heritage and practices, indigenous knowledge and biological resources related thereto, or national heritage;
- (e) fostering economic development, industrialisation and beneficiation;
- (f) achieving the progressive realisation of socio-economic rights; or 15
- (g) protecting the environment and the conservation and sustainable use of natural resources.

(2) The government or any organ of state may take measures that are necessary for the fulfilment of the Republic's obligations in regard to the maintenance, compliance or restoration of international peace and security, or the protection of the security interests, including the financial stability of the Republic. 20

Dispute resolution

13. (1) An investor that has a dispute in respect of action taken by the government, which action affected an investment of such foreign investor, may within six months of becoming aware of the dispute request the Department to facilitate the resolution of such dispute by appointing a mediator. 25

(2) (a) The Department must maintain a list of qualified mediators of high moral character and recognised competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment and who are willing and able to serve as mediators. 30

(b) The mediator must be appointed by agreement between the government and the foreign investor (hereinafter referred to as the parties) from the list contemplated in paragraph (a), or, in the absence of a list, from individuals proposed by either party.

(c) In the event of the Department being party to the dispute, the parties may jointly request the Judge President of one of the divisions of the High Court to appoint a mediator. 35

(d) Recourse to mediation must be governed by the prescribed rules and any prescribed time limit may be adjusted by agreement between the disputing parties.

(3) In order to facilitate a resolution of a dispute contemplated in subsection (1), the following information and prescribed form must be submitted by the foreign investor: 40

- (a) Contact details of the foreign investor, including a physical address in the Republic or territory where the investor is predominantly resident, or where it is incorporated, its email address, facsimile number and telephone number;
- (b) a summary of the claim, including the measures giving rise to the investment dispute; 45
- (c) the specific organ, agency, province or other subdivision of the Republic allegedly responsible for the measures which the foreign investor alleges constitute a breach of any of the investment protection contained in this Act;
- (d) the provisions of this Act that the foreign investor alleges have been breached; and 50
- (e) the relief sought.

Oordrag van fondse

11. 'n Buitelandse belegger kan, ten opsigte van 'n belegging, fondse repatrieer behoudens belasting- en ander toepaslike wetgewing.

Reg om te reguleer

12. (1) Ondanks enige andersluidende bepalings in hierdie Wet, kan die regering of 'n staatsorgaan, ooreenkomstig die Grondwet en toepaslike wetgewing, stappe doen, wat kan insluit—

- (a) die herstel van historiese, maatskaplike en ekonomiese ongelykhede en ongeregtighede;
- (b) die handhaaf van die waardes en beginsels wat in artikel 195 van die Grondwet voorgestaan word;
- (c) die handhaaf van die regte wat in die Grondwet gewaarborg word;
- (d) die bevordering en beskerming van kulturele erfenis en praktyke, inheemse kennis en biologiese hulpbronne wat daarmee verband hou, of nasionale erfenis;
- (e) die bevordering van ekonomiese ontwikkeling, industrialisering en benefisiëring;
- (f) die bereiking van die progressiewe verwesenliking van sosio-ekonomiese regte; of
- (g) die beskerming van die omgewing en die bewaring van nasionale hulpbronne, en die onderhoubare gebruik daarvan.

(2) Die regering of enige staatsorgaan kan stappe doen wat nodig is vir die vervulling van die Republiek se se verpligtinge ten opsigte van die handhawing, voldoening aan of herstel van internasionale vrede en veiligheid, of die beskerming van die veiligheidsbelange, met inbegrip van die finansiële stabiliteit, van die Republiek.

Geskilbeslegting

13. (1) 'n Belegger wat 'n geskil het oor 'n handeling van die regering, welke handeling 'n belegging van sodanige buitelandse belegger geraak het, kan binne ses maande vanaf bewuswording van die geskil versoek dat die Departement die beslegting van die geskil fasiliteer deur 'n bemiddelaar aan te stel.

(2) (a) Die Departement moet 'n lys hou van gekwalifiseerde bemiddelaars van hoë morele karakter en erkende bevoegdheid op die terrein van die reg, handel, nywerheid of finansies, op wie vertrou kan word om onafhanklike oordeel uit te oefen en wat bereid en bevoeg is om as bemiddelaars te dien.

(b) Die bemiddelaar moet aangestel word by ooreenstemming tussen die regering en die buitelandse belegger (hierna na verwys as die partye) vanuit die lys in paragraaf (a) bedoel of, by gebrek aan 'n lys, van individue deur elke party voorgestel.

(c) Waar die Departement 'n party by die geskil is, mag die partye die Regter-President van een van die afdelings van die Hoë Hof gesamentlik versoek om 'n bemiddelaar aan te stel.

(d) Toegang tot bemiddeling moet deur die voorgeskrewe reëls beheer word en enige voorgeskrewe tydsbeperking kan by ooreenkoms tussen die strydende partye aangepas word.

(3) Ten einde 'n beslegting van 'n geskil in subartikel (1) beoog te fasiliteer, moet die volgende inligting en voorgeskrewe vorm deur die buitelandse belegger voorgelê word:

- (a) Kontakbesonderhede van die buitelandse belegger, met inbegrip van 'n fisiese adres in die Republiek of gebied waar die belegger hoofsaaklik woon, of waar hy ingelyf is, sy email-adres, faksimilee-nommer en telefoonnommer;
- (b) 'n opsomming van die eis, met inbegrip van die maatreëls wat aanleiding gee tot die beleggingsgeskil;
- (c) die bepaalde orgaan, agentskap, provinsie of ander onderverdeling van die Republiek na bewering verantwoordelik vir maatreëls wat die buitelandse belegger beweer 'n breuk uitmaak van enige van die beleggingsbeskermingsmaatreëls in hierdie Wet vervat;
- (d) die bepalings van hierdie Wet wat die buitelandse belegger beweer oortree is; en
- (e) die regshulp waarvoor gevra word.

(4) Subject to applicable legislation, an investor, upon becoming aware of a dispute as referred to in subsection (1), is not precluded from approaching any competent court, independent tribunal or statutory body within the Republic for the resolution of a dispute relating to an investment.

(5) The government may consent to international arbitration in respect of investments covered by this Act, subject to the exhaustion of domestic remedies. The consideration of a request for international arbitration will be subject to the administrative processes set out in section 6. Such arbitration will be conducted between the Republic and the home state of the applicable investor. 5

Regulations 10

14. The Minister may, by notice in the *Gazette*, make regulations regarding—
- (a) any matter which may or must be prescribed in terms of this Act; or
 - (b) any other matter the regulation of which may be necessary in order to achieve the purposes of this Act.

Transitional arrangements 15

15. (1) Existing investments that were made under bilateral investment treaties will continue to be protected for the period and terms stipulated in the treaties.

(2) Any investments made after the termination of bilateral investment treaties, but before promulgation of this Act, will be governed by the general South African law.

Short title and commencement 20

16. This Act is called the Protection of Investment Act, 2015, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

(4) Behoudens toepaslike wetgewing, is 'n belegger nie daarvan belet om by bewuswording van 'n geskil in subartikel (1) bedoel, enige bevoegde hof, onafhanklike tribunaal of statutêre liggaam binne die Republiek te nader vir die beslegting van 'n geskil oor 'n belegging nie.

(5) Die regering kan instem tot internasionale arbitrasie ten opsigte van beleggings wat deur hierdie Wet gedek word, behoudens die uitputting van binnelandse remedieë. Die oorweging van 'n aansoek vir internasionale arbitrasie is onderhewig aan die administratiewe prosesse in artikel 6 bedoel. Sodanige arbitrasie sal tussen die Republiek en die tuisstaat van die toepaslike belegger geskied. 5

Regulasies

10

14. Die Minister kan, by kennisgewing in die *Staatskoerant*, regulasies uitvaardig aangaande—

- (a) enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf kan of moet word; of
- (b) enige ander aangeleentheid waarvan die regulasie nodig mag wees ten einde die doeleindes van hierdie Wet te bereik. 15

Oorgangsmaatreëls

15. (1) Bestaande beleggings wat kragtens bilaterale beleggingsverdrae gemaak is sal steeds beskerm wees vir die tydperk en voorwaardes in die verdrae vasgestel.

(2) Enige beleggings wat na die beëindiging van bilaterale beleggingsverdrae, maar voor die uitvaardiging van hierdie Wet, gemaak is, sal deur die algemene Suid-Afrikaanse reg beheer word. 20

Kort titel en inwerkingtreding

16. Hierdie Wet heet die Wet op Beskerming van Beleggings, 2015, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal. 25

