

(1 June 2006 – to date)

[This is the **current** version and applies as from **1 June 2006**, i.e. the date of commencement of National Credit Act 34 of 2005 - to date]

## CONVENTIONAL PENALTIES ACT 15 OF 1962

*Government Gazette 202, dated 16 March 1962. Commencement date: 16 March 1962*

*(English text signed by the State President.)*

*(Assented to 5 March 1962)*

### As amended by:

*(General Law Amendment Act 102 of 1967 – Government Gazette No.1771, dated 21 June 1967.*

*Commencement date: 21 June 1967)*

*(General Law Amendment Act 49 of 1996 – Government Gazette No.17477, dated 4 October 1996.*

*Commencement date: 4 October 1996)*

*(Justice Laws Rationalisation Act 18 of 1996 – Government Gazette No.17129, dated 19 April 1996.*

*Commencement date: 1 April 1997 [Proc. No. R 23, Gazette No. 17849, dated 12 March 1997])*

**Editor's note:** Act 15 of 1962 became applicable in the remainder of the national territory by Section 2 of Act 18 of 1996. **Editor's note:** Act 15 of 1962 was repealed by section 3 of Act 18 of 1996 in so far as it applied in Transkei, Bophuthatswana, Venda, Ciskei, Gazankulu, Kangwane, Kwandebele, Lebowa and Qwaqwa.

*(National Credit Act 34 of 2005 – Government Gazette No.28619, dated 15 March 2006. Commencement*

*date: 1 June 2006 [Proc.No.22, Gazette No. 28824, dated 11 May 2006])*

**Editor's note:** Should a conflict arise between this Act and the National Credit Act 34 of 2005, the provisions of Act 34 of 2005 will prevail to the extent of the conflict – see section 172(1) of Act 34 of 2005.

## ACT

**To provide for the enforceability of penalty stipulations, including stipulations based on pre-estimates of damage, and of forfeiture clauses.**

## ARRANGEMENT OF SECTIONS

1. Stipulations for penalties in case of breach of contract to be enforceable
2. Prohibition on cumulation of remedies and limitation on recovery of penalties in respect of defects or delay.
3. Reduction of excessive penalty.

Prepared by:

4. Provisions as to penalty stipulations also apply in respect of forfeiture stipulations
5. ....
6. ....
7. Short title

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

**1. Stipulations for penalties in case of breach of contract to be enforceable**

- (1) A stipulation, hereinafter referred to as a penalty stipulation, whereby it is provided that any person shall, in respect of an act or omission in conflict with a contractual obligation, be liable to pay a sum of money or to deliver or perform anything for the benefit of any other person, hereinafter referred to as a creditor, either by way of a penalty or as liquidated damages, shall, subject to the provisions of this Act, be capable of being enforced in any competent court.
- (2) Any sum of money for the payment of which or anything for the delivery or performance of which a person may so become liable, is in this Act referred to as a penalty.

**2. Prohibition on cumulation of remedies and limitation on recovery of penalties in respect of defects or delay.**

- (1) A creditor shall not be entitled to recover in respect of an act or omission which is the subject of a penalty stipulation, both the penalty and damages, or, except where the relevant contract expressly so provides, to recover damages in lieu of the penalty.
- (2) A person who accepts or is obliged to accept defective or non-timeous performance shall not be entitled to recover a penalty in respect of the defect or delay, unless the penalty was expressly stipulated for in respect of that defect or delay.

**3. Reduction of excessive penalty.**

If upon the hearing of a claim for a penalty, it appears to the court that such penalty is out of proportion to the prejudice suffered by the creditor by reason of the act or omission in respect of which the penalty was stipulated, the court may reduce the penalty to such extent as it may consider equitable in the circumstances: Provided that in determining the extent of such prejudice the court shall take into consideration not only the creditor's proprietary interest, but every other rightful interest which may be affected by the act or omission in question.

**4. Provisions as to penalty stipulations also apply in respect of forfeiture stipulations**

A stipulation whereby it is provided that upon withdrawal from an agreement by a party thereto under circumstances specified therein, any other party thereto shall forfeit the right to claim restitution of anything performed by him in terms of the agreement, or shall, notwithstanding the withdrawal, remain liable for the performance of anything thereunder, shall have effect to the extent and subject to the conditions prescribed in sections *one* to *three*, inclusive, as if it were a penalty stipulation.

5. ....

*(Section 5 substituted by section 18(1) of Act 102 of 1967)*

*(Section 5 substituted by section 4 and Schedule III of Act 18 of 1996)*

*(Section 5 repealed by section 172(2) read with Schedule II of Act 34 of 2005)*

6. ....

*(Section 6 repealed by section 1 read with the Schedule of Act 49 of 1996)*

7. **Short title**

This Act shall be called the Conventional Penalties Act, 1962