

CONVENTIONAL PENALTIES ACT 15 OF 1962

(English text signed by the State President)

[Assented To: 5 March 1962]

[Commencement Date: 16 March 1962]

as amended by:

General Law Amendment Act 102 of 1967
Justice Laws Rationalisation Act 18 of 1996
General Law Amendment Act 49 of 1996
National Credit Act 34 of 2005

Editor's Note: If there is a conflict between a provision of the National Credit Act 34 of 2005, in so far as it applies to a credit agreement, and a provision of this Act, the provisions of the National Credit Act prevail to the extent of the conflict. See [section 172](#) and [Schedule 1](#) of the National Credit 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

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[\(General: Decided cases\)](#)

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

[\(Section 1\(1\): Decided cases\)](#)

- (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

[\(Section 2\(1\): Decided cases\)](#)

- (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.

[\(Section 3: Decided cases\)](#)

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.

[\(Section 4: Decided cases\)](#)

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.

[S. 5 substituted by s. 18 of Act 102/67 and s. 4 of Act 18/96 and repealed by s. 172 of Act 34/2005]

6.

[S. 6 repealed by s. 1 of Act 49/96]

7. Short title

This Act shall be called the Conventional Penalties Act, 1962.