



ARRANGEMENT OF SECTIONS

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An Act to make provision for the promotion of trade with countries outside Botswana by providing for the re-insurance, with the Government, of insurance contracts in connexion with export transactions and loans or similar facilities connected with such transactions.

Date of Assent: 20.06.97.

Date of Commencement: 18.07.97.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Export Credit Re-Insurance Act, 1997.
2. In this Act, unless the context otherwise requires —
 - “contract of re-insurance” means a contract of re-insurance entered into in terms of an agreement referred to in section 3;
 - “foreign country” means any country, other than Botswana;
 - “Fund” means the Export Credit Re-insurance Fund established under section 4;
 - “Minister” means the Minister responsible for commerce and industry;
 - “person” includes any Government agency or semi-Government agency;
 - “trade with foreign countries” or “trade with a foreign country” includes any transaction (including a transaction for the rendering of a service) involving a consideration in money or money's worth accruing from a person in the course of carrying on business or other activities outside Botswana to a person carrying on business in Botswana and any consignment of goods to a person carrying on business or other activities outside Botswana with a view to such a transaction.

Short title

Interpretation

3. (1) The Minister may enter into an agreement with any person who is registered as an insurer in terms of the Insurance Act with the object of re-insuring, against the payment of a premium and on such other terms and conditions as may, in consultation with the Minister responsible for finance, be specified in such agreement, any contracts of insurance entered into by such person with, or for the benefit of, persons carrying on business in Botswana.

(2) The contracts referred to in subsection (1) shall be contracts of insurance against 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 connexion with acts or transactions in the course of trade with foreign countries, or out of or in connexion with any loan or similar facility connected with such act or transaction and granted by a person carrying on business in Botswana to a person carrying on business or other activities outside Botswana, for any of the following causes -

- (a) the operation of a law, or of an order or other instrument having the force of law, which —
 - (i) prevents, restricts or controls the transfer of payments from a foreign country to Botswana, or
 - (ii) prevents, restricts or controls the importation of goods into a foreign country;
- (b) the occurrence of war,
- (c) the occurrence of hostilities, civil war, revolution, insurrection, boycott, strike or other disturbance outside Botswana; and
- (d) such other causes as the Minister may, in consultation with the Minister of Finance, deem to arise from risks not normally insurable.

4. (1) The Minister shall establish a fund, to be known as the Export Credit Re-insurance Fund, into which shall be paid moneys appropriated by Parliament for the purposes of this Act, premiums and other moneys accruing to the Fund under contracts of re-insurance, and such other moneys as may accrue to the Fund.

(2) All moneys received by the Fund shall be paid into a banking account and no moneys shall be withdrawn therefrom except by means of cheques signed by such person or persons as may be authorized by the Minister.

- (3) There shall be paid out of the Fund —
 - (a) all moneys required for the discharge of claims or other liabilities under contracts of re-insurance;
 - (b) any remuneration and allowances referred to in sections 5 and 6; and
 - (c) such other costs of administering this Act as may be determined by the Minister.

(4) The Minister, in consultation with the Minister responsible for finance, 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 (3); and any moneys in excess of the amount so determined shall be paid into the Consolidated Fund.

(5) The Minister shall from time to time, in consultation with the Minister responsible for finance, determine the maximum amount which the contingent liability on the Fund under contracts of re-insurance shall not exceed.

(6) Notwithstanding the provisions of subsection (4), the Minister may withdraw, from the Fund, and invest in such manner as may be approved by the Minister responsible for finance, any moneys which may be surplus to the immediate requirements of the Fund.

(7) If in the opinion of the Minister it is necessary in order to meet any unforeseen contingency or expenditure incurred by him in connexion with the administration of this Act or to meet any temporary deficiency in the Fund, he may borrow money for the purpose by such means and upon such terms and conditions as are agreed upon; and deficiencies which for any reason are not met out of moneys borrowed in terms of this subsection shall be met out of the Consolidated Fund which is hereby appropriated for the purpose.

(8) The Minister shall cause to be kept proper books of account, and other books and records in relation thereto, which shall be balanced up to the 31st March in each year, and in which shall be recorded all the financial transactions of the Fund.

(9) The accounts of the Fund shall be audited by the Auditor General who shall for the purpose have all the powers conferred upon him by the Finance and Audit Act, and shall embody such accounts in his annual report laid before the National Assembly in terms of that Act. Cap 54:01

5. (1) The Minister may establish such committees as he may deem necessary to advise him on any matter in connexion with the administration and operation of this Act. Advisory
Committees

(2) The members of any such committee who —

(a) are members of the public service shall hold office for such period as the Minister may, in writing, direct;

(b) are not members of the public service shall be appointed on such conditions, and be paid out of the Fund, such allowances as the Minister may determine in consultation with the Minister responsible for finance.

6. (1) Subject to the provisions of section 5, the Minister shall administer this Act through officers appointed in accordance with the Public Service Act: Administration
of Act

Provided that the Minister may enter into an agreement with any other person whereunder that person undertakes to perform any work arising from this Act or from any re-insurance effected under this Act.

Delegation of
powers of
Minister

(2) The Minister may, in consultation with the Minister responsible for finance, determine the remuneration and allowances to be paid to such other person engaged in terms of subsection (1) in respect of his services, and the said remuneration and allowances shall be paid out of the Fund.

7. Any power which may be exercised under this Act by the Minister may be exercised by any officer in his Ministry delegated thereto by him, and any power which may be exercised under this Act by the Minister in consultation with the Minister responsible for finance may be exercised by any officer in the aforesaid Ministry in consultation with an officer in the Ministry responsible for finance delegated thereto by the Minister responsible for finance.

Offences and
penalties

8. (1) Any person who wilfully makes a false or misleading statement in or in connexion with a contract of insurance which forms the subject of a contract of re-insurance shall be guilty of an offence and shall be liable to a fine not exceeding P2 000, or to imprisonment for a period not exceeding 12 months, or to both.

(2) Whenever any person is convicted of an offence under this Act, he shall forfeit all rights under the contract of insurance in respect of which such offence was committed and the court so convicting him may summarily inquire into and assess the monetary equivalent of any advantage which he may have gained in consequence of that offence, and shall, in addition to any other penalty imposed in respect of that offence, impose upon him a fine equal to the amount so assessed.

(3) A magistrate's court shall have jurisdiction to impose such additional penalty as is referred to in subsection (2) even though such penalty may, either alone or together with any other penalty imposed by that court, exceed the punitive jurisdiction of a magistrate's court.

Regulations

9. The Minister may make regulations for the better carrying out of the objects and purposes of this Act.

PASSED by the National Assembly this 20th day of June, 1997.

C.T. MOMPEI,
Clerk of the National Assembly.