

REPUBLIC OF SOUTH AFRICA

PRESCRIBED RATE OF INTEREST AMENDMENT BILL

(As amended by the Portfolio Committee on Justice (National Assembly))

(MINISTER OF JUSTICE)

[B 8B—96]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE VOORGESKREWE RENTEKOERS

(Soos gewysig deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

(MINISTER VAN JUSTISIE)

[W 8B—96]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Prescribed Rate of Interest Act, 1975, so as to regulate the payment of interest on unliquidated debts; and to provide for matters connected therewith.

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

Insertion of section 2A in Act 55 of 1975

1. The Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), (hereinafter referred to as the principal Act), is hereby amended by the insertion after section 2 of the following section: 5

“Interest on unliquidated debts

2A. (1) Subject to the provisions of this section the amount of every unliquidated debt as determined by a court of law, or an arbitrator or an arbitration tribunal or by agreement between the creditor and the debtor, shall bear interest as contemplated in section 1. 10

(2) (a) Subject to any other agreement between the parties the interest contemplated in subsection (1) shall run from the date on which payment of the debt is claimed by the service on the debtor of a demand or summons, whichever date is the earlier. 15

(b) In the case of arbitration proceedings and subject to any other agreement between the parties, interest shall run from the date on which the creditor takes steps to commence arbitration proceedings, or any of the dates contemplated in paragraph (a), whichever date is the earlier. 20

(3) The interest on that part of a debt which consists of the present value of a loss which will occur in the future shall not commence to run until the date upon which the quantum of that part is determined by judgment, arbitration or agreement and any such part determined by arbitration or agreement shall for the purposes of this Act be deemed to be a judgment debt. 25

(4) Where a debtor offers to settle a debt by making a payment into court or a tender and the creditor accepts the payment or tender, or a court of law

awards an amount not exceeding such payment or tender, the running of interest shall be interrupted from the date of the payment into court or the tender until the date of the said acceptance or award.

(5) Notwithstanding the provisions of this Act but subject to any other law or an agreement between the parties, a court of law, or an arbitrator or an arbitration tribunal may make such order as appears just in respect of the payment of interest on an unliquidated debt, the rate at which interest shall accrue and the date from which interest shall run.

(6) The provisions of section 2(2) shall apply *mutatis mutandis* to interest recoverable under this section.”.

Substitution of section 4 of Act 55 of 1975

2. The following section is hereby substituted for section 4 of the principal Act:

“Definitions

4. In this Act, unless the context indicates otherwise—

- (i) ‘court of law’ means a court having jurisdiction in respect of the matter in question; (ii)
- (ii) ‘demand’ means a written demand setting out the creditor’s claim in such a manner as to enable the debtor reasonably to assess the quantum thereof. (i)”.

Short title

3. This Act shall be called the Prescribed Rate of Interest Amendment Act, 1996.

MEMORANDUM ON THE OBJECTS OF THE PRESCRIBED RATE OF INTEREST AMENDMENT BILL, 1996

The Bill emanates from, *inter alia*, the recommendation of the South African Law Commission on Interest on Damages. The principal object of the Amendment Bill is to amend the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), so as to enable a creditor to receive interest on an unliquidated debt.

The said amendments provide—

- * that each unliquidated debt is to bear interest on the amount of the debt as determined by agreement, an arbitrator or a court;
- * that the said interest shall run from the date of service of a written demand or summons;
- * that the part of a debt consisting of the present value of a future loss bears no interest before the date upon which the quantum of that part is determined by judgment, agreement or arbitration, and that where such part is determined by agreement or arbitration it is deemed to be a judgment debt;
- * that where a debtor makes a payment into the court or a tender and the creditor accepts the payment or tender or the court or arbitrator awards an amount not exceeding the payment into court or tender, the running of interest shall be interrupted from the date of payment into court or tender until the date of such award or acceptance;
- * that notwithstanding the proposed provisions but subject to any other law or agreement between the parties, it will be competent for a court or an arbitrator to make such order as appears just in respect of the payment of interest on an unliquidated debt, the rate at which interest accrues and the date upon which interest commences to accrue.

The Bill is based on the draft Bill prepared by and contained in the report of the South African Law Commission on Interest on Damages.

PARTIES CONSULTED

The South African Law Commission and the Department consulted interested parties including lawyers, accountants and the insurance industry. The comments received were taken into account in the formulation of the Bill.