South-African "Conventional Penalties Act" of 1962 (Wet No. 15 of 1962)

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CONVENTIONAL PENALTIES ACT 15 OF 1962

ASSENTED TO 5 MARCH 1962

DATE OF COMMENCEMENT: 16 MARCH 1962

as amended by

General Law Amendment Act 102 of 1967

Justice Laws Rationalization Act 18 of 1996

General Law Amendment Act 49 of 1996

ACT

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

Art. 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.

Art. 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.

Art. 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.

[...]

Referring Principles:

VI.4 - Promise to pay in case of non-performance