

eSwatini

## Contractual Penalties Act, 1971

Act 13 of 1971

Legislation as at 1 December 1998

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Contractual Penalties Act, 1971  
Contents

1. Short title ..... 1

2. Interpretation ..... 1

3. Penalty stipulation enforceable ..... 1

4. Prohibition of certain cumulative remedies ..... 1

5. Reduction of excessive penalty ..... 1

6. Penalty provisions also apply to forfeiture ..... 2

7. Hire Purchase Act to prevail ..... 2

## eSwatini

# Contractual Penalties Act, 1971

## Act 13 of 1971

Assented to on 25 June 1971

Commenced on 9 July 1971

*[This is the version of this document at 1 December 1998.]*

**An Act to provide for the enforceability of penalty provisions, including provisions based on pre-estimates of damages and of forfeiture clauses.**

### 1. Short title

This Act may be cited as the Contractual Penalties Act, 1971.

### 2. Interpretation

In this Act unless the context otherwise requires—

"**penalty provision**" means a provision in an agreement in terms of which any person becomes liable to pay a sum of money or deliver or perform anything for the benefit of a promisee, either by way of penalty or as liquidated damages, in respect of an act or omission in conflict with any obligation under any agreement;

"**penalty**" means any sum of money for the payment of which or anything for the delivery or performance of which any person may become liable to a promisee;

"**promisee**" means the person to whom or for whose benefit any other person is liable to pay any sum of money or to deliver or perform anything.

### 3. Penalty stipulation enforceable

Subject to this Act any penalty provision shall be enforceable in a court.

### 4. Prohibition of certain cumulative remedies

- (1) A promisee shall not be entitled to recover both the penalty and damages nor, unless the relevant agreement so expressly provides, to recover damages in lieu of the penalty, in respect of any act or omission which is the subject of a penalty provision.
- (2) A person who accepts or is obliged to accept defective 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.

### 5. Reduction of excessive penalty

If upon the hearing of a claim for any penalty, it appears to the court that such penalty is out of proportion to the prejudice suffered by the promisee 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 considers equitable in the circumstances:

Provided that in determining the extent of such prejudice the court shall take into consideration not only the promisee's proprietary interest, but every other rightful interest which may be affected by the act or omission in question.

## 6. **Penalty provisions also apply to forfeiture**

Any provision in terms of which upon withdrawal from any 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 or shall, notwithstanding such withdrawal, remain liable for the performance of anything thereunder, shall have effect to the extent and subject to the conditions prescribed in [sections 3 to 5](#) inclusive as if it were a penalty provision.

## 7. **Hire Purchase Act to prevail**

If the Hire Purchase Act, [No. 11 of 1969](#), or any regulation or notice issued thereunder is applicable to any agreement, this Act shall not apply to such agreement insofar as it is in conflict with such Act, regulation or notice.