

DEBTORS AND CREDITORS

Usury Act 73 of 1968, as amended in South Africa prior to Namibian independence 

Summary: This Act ([RSA GG 2119](#)) provides for the limitation and disclosure of finance charges on loan and credit transactions and sets maximum rates of interest for loans. It was originally called the “*Limitation and Disclosure of Finance Charges Act*”, but the name was changed to “*Usury Act*” by the *Limitation and Disclosure of Finance Charges Amendment Act 42 of 1986*. It was brought into force in South Africa and South West Africa on 1 April 1969 by RSA Proc. 366/1968 ([RSA GG 2235](#)) in terms of section 19 of the Act.

Repeals: The Act repeals the *Usury Act 37 of 1926* as amended.

Applicability to SWA: Section 1, as amended by *Act 62 of 1974*, defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 19(1), which was in the original Act, states “The provisions of this Act and any amendment thereof shall apply also in the territory of South West Africa, including the area known as the Eastern Caprivi Zipfel and referred to in section 3(3) of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and also in relation to all persons in that portion of the territory known as the ‘Rehoboth Gebiet’ and defined in the First Schedule to Proclamation No. 28 of 1923, of the Administration of the said territory.”

Transfer of administration to SWA: This Act was administered by the Minister of Finance. Acts administered by the Minister of Finance in the Department of Inland Revenue were transferred to South West Africa by the Executive Powers (Inland Revenue) Transfer Proclamation, AG 18 of 1978, but this Act fell under the Department of Finance, as indicated by various government notices issued under the Act. See, for example, Government Notice R.2019/1974 ([RSA GG 4475](#)) and Government Notice R.2457/1982 ([RSA GG 8446](#)). There was no transfer proclamation for laws administered by the Minister of Finance in the Department of Finance.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Limitation and Disclosure of Finance Charges Amendment Act 76 of 1970* ([RSA GG 2873](#))
- *Limitation and Disclosure of Finance Charges Amendment Act 62 of 1974* ([RSA GG 4457](#))
- *Limitation and Disclosure of Finance Charges Amendment Act 90 of 1980* ([RSA GG 7143](#))
- *Limitation and Disclosure of Finance Charges Amendment Act 42 of 1986* ([RSA GG 10216](#))
- *Usury Amendment Act 62 of 1987* ([RSA GG 10929](#))
- *Usury Amendment Act 100 of 1988* ([RSA GG 11528](#))
- *Usury Amendment Act 91 of 1989* ([RSA GG 11943](#)).

The Act was also amended in South Africa by the *Usury Amendment Act 67 of 1990* ([RSA GG 12566](#)), but this amendment came into force only on 29 June 1990 (its date of publication), which was after the date of Namibian independence.

After independence, section 15(e) of the Act was repealed by Act 1/2000 ([GG 2269](#)).

The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 ([GG 2529](#)), which was brought into force on 14 May 2001 by GN 85/2001 ([GG 2528](#)), amends section 1.

Act 6/2018 ([GG 6663](#)), which was brought into force on 15 October 2018 by GN 260/2018 ([GG 6736](#)), amends section 1 and inserts section 2C.

Act 6/2018 states that it amends section 2 by the insertion of section 2C, but section 2C appears to be intended for insertion as an independent section; the Act already contains independent sections 2A and 2B.

The Abolition of Payment by Cheque Act 16 of 2022 ([GG 7995](#)), which was brought into force on 15 March 2023 by GN 47/2023 ([GG 8050](#)), amends sections 1-3 and 10.

Regulations: Regulations are authorised by section 16 of the Act. There is no savings clause for regulations issued under the repealed Act. The following pre-independence regulations issued under the current Act remain in force (although they may have been superseded by subsequent enactments):¹⁰⁶

Regulations contemplated in sections 2(1), (2) and (3), 3A(2)(a) and 15(g) are contained in RSA GN R.943/1988 ([RSA GG 11303](#)). They were amended by RSA GN R.1304/1988 ([RSA GG 11382](#)), a notice on finance charges, which repeals regulations 1-3. The remaining regulations in this set were still in force at the time of Namibian independence.¹⁰⁷

No post-independence regulations have been promulgated.

Notices on finance charges: Maximum annual finance charge rates are announced in government notices from time to time, with each one typically withdrawing or repealing the previous one. See, since independence, GN 97/1992 ([GG 455](#)), GN 39/1993 ([GG 617](#)), GN 27/1994 ([GG 807](#)), GN 47/1995 ([GG 1037](#)), GN 97/1995 ([GG 1090](#)), GN 154/1995 ([GG 1151](#)), GN 126/1997 ([GG 1590](#)), GN 6/2000 ([GG 2259](#)), GN 135/2002 ([GG 2782](#)), General Notice 196/2004 ([GG 3266](#)) and General Notice 572/2018 ([GG 6736](#)).

Maximum finance charge rates for microlending transactions are determined in General Notice 571/2018 ([GG 6736](#)).

Notices on exemptions: RSA GN R.251/1983 ([RSA GG 8543](#)) designates estate agents who are holders of fidelity fund certificates in terms of section 16 of the *Estate Agents Act 112 of 1986* as an exempted category of persons under section 2(11)(b) of the Usury Act, on condition that they may stipulate for, demand or receive payment from a borrower only for services rendered to such borrower in connection with a money lending transaction in terms of section 2(11)(b) of the Usury Act (which was referred to in this notice under its previous name, the *Limitation and Disclosure of Finance Charges Act 73 of 1968*).

RSA GN 2262/1988 ([RSA GG 11563](#)), as amended by RSA GN 1697/1989 ([RSA GG 12040](#)), exempts certain leasing and credit transactions from the provisions of the Act.

RSA GN 1418/1989 ([RSA GG 11987](#)) exempts certain money lending transactions from the provisions of section 4 of the Act.

¹⁰⁶ **Repealed regulations:** Regulations contemplated in sections 2(1)(a), (1)(b) and (1)(c), (2) and (3), 3A(2)(a) and 15(g) are contained in RSA GN R.2566/1986 ([RSA GG 10537](#)) (operational with effect from 5 December 1986), as amended by RSA GN R.141/1987 ([RSA GG 10587](#)) (which repeals regulations 1, 2, 3 and 4 with effect from 23 January 1987) and RSA GN R.943/1988 ([RSA GG 11303](#)) (which repeals regulations 5 and 6 with effect from 5 May 1988). The net effect of these repeals is to remove all of the substantive provisions of these regulations. (The only two remaining regulations concerned the effective date and the repeals, and they were repealed by RSA GN R.943/1988 ([RSA GG 11303](#)).) The 1986 regulations repealed the ones published in RSA Government Notices R.1671 of 8 August 1986 and R.2131 of 9 October 1986.)

Regulations contemplated in sections 2(1)(a), (1)(b) and (1)(c), (2) and (3) are contained in RSA GN R.141/1987 ([RSA GG 10587](#)), but are repealed in their entirety by RSA GN R.2634/1987 ([RSA GG 11045](#)).

Regulations contemplated in sections 2(1)(a), (1)(b) and (1)(c), (2) and (3) are contained in RSA GN R.2634/1987 ([RSA GG 11045](#)), but all of the substantive provisions of these regulations are repealed by RSA GN R.630/1988 ([RSA GG 11221](#)). (The only two remaining regulations concern the effective date and the repeals.)

Regulations contemplated in sections 2(1)(a), (1)(b) and (1)(c), (2) and (1) are contained in RSA GN R.630/1988 ([RSA GG 11221](#)), but all of the substantive provisions of these regulations are repealed by RSA GN R.943/1988 ([RSA GG 11303](#)). (The only two remaining regulations concern the effective date and the repeals.)

¹⁰⁷ The remaining regulations in this set were repealed in South Africa after Namibian independence by RSA GN 1489/1992 ([RSA GG 13998](#)).

Certain exemptions relating to micro loan transactions are set forth in GN 34/2000 ([GG 2267](#)), which is replaced by GN 136/2002 ([GG 2782](#)), replaced in turn by GN 189/2004 ([GG 3266](#)). However, GN 189/2004 was repealed by GN 262/2018 ([GG 6736](#)) when the Microlending Act 7 of 2018 came into force.

Cases: *Open Learning Group Namibia Finance CC v Permanent Secretary, Ministry of Finance & Others* 2006 (1) NR 275 (HC); substantive issues upheld on appeal in *Permanent Secretary in the Ministry of Finance & Others v OLG Finance CC* 2020 (2) NR 465 (SC) (section 15A of Act; applicability of finance charges in GN 135/2002 ([GG 2782](#)) and procedure for cancellation of status as microlender in GN 136/2002 ([GG 2782](#)); decision to deregister a party as a microlender and decision to revoke a payroll deduction facility are both administrative actions for the purposes of Art 18 of the Namibian Constitution).

See also dicta in *WS Trading and Investment CC & Others v Capx Finance Namibia (Pty) Ltd* 2021 (3) NR 694 (SC) at para 21 (footnotes omitted):

[21] One aspect remains and calls for comment. The exorbitant interest charged on the loan was raised in the papers but correctly not persisted with. The capital attracted interest at 3% per month and in the event of default, a further 1,5% per month became payable. Interest was thus charged at the extremely high rate of 4,5% per month. This interest regime as set out in the agreement surprisingly does not fall foul of the Usury Act 12 because the loaned sum is in excess of threshold amount of N\$500 000 provided for in s 15(g) of the Usury Act read with the regulations [RSA GN R.943/1988 as amended]. This means interest at an effective annual rate of 54% is not impermissible under statute and is thus payable in terms of the agreement. The legislature may well consider extending the threshold or improving the protective provisions of the Usury Act to protect consumers from such an extremely high rate of interest [citing LLD thesis *Towards Responsible Lending in Namibian Consumer Credit Law: A Comparative Investigation* by Ndatega Victoria Asheela (November 2017)]. The threshold amount was last increased by regulation in 1988 and has since been left untouched despite the significant decline in the value of money since then.

Suretyship Amendment Act 57 of 1971

Summary: This Act ([RSA GG 3149](#)) repeals the common law rules which previously protected women from the consequences of suretyship.

Applicability to SWA: Section 4 states “This Act shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” This wording would not have made amendments to the Act in South Africa automatically applicable to SWA, but there were in any event no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: The administration of the Act does not appear to have been transferred to South West Africa. In any event, the issue of transfer is not relevant to the content of the Act since there were no amendments to the Act in South Africa prior to Namibian independence.

Amendments: The Bills of Exchange Act 22 of 2003 ([GG 3121](#)) repeals the reference to the Bills of Exchange Act 34 of 1964 in the Schedule to the Act.

Regulations: The Act makes no provision for regulations.

Prescribed Rate of Interest Act 55 of 1975, as amended in South Africa prior to Namibian independence



Summary: This Act ([RSA GG 4755](#)) prescribes the calculation of interest on debts in certain circumstances and provides for payment of interest on certain judgement debts. It was brought into force

in South Africa and South West Africa on 16 July 1976 by RSA Proc. R.126/1976 ([RSA GG 5215](#)), in terms of section 4 of the Act.

Applicability to SWA: Section 4 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: It is not clear whether the administration of this Act was transferred to SWA. Section 1(2) of the Act gives the Minister of Justice power to prescribe rates of interest, suggesting that the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended, may have been applicable. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Participation Bonds Act 55 of 1981, as amended in South Africa prior to Namibian independence  

Summary: This Act ([RSA GG 7761](#)) provides for the rights of participants in certain mortgage bonds. It repeals the *Participation Bonds Act 48 of 1964*, as amended. This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 ([GG 7645](#)), which has not yet been brought into force. Note, however, that Act 2 of 2021 (in item 6 of Schedule 3) provides for the continued application of this Act to a certain extent for a period of three years after the date of repeal, in respect of matters occurring during the period three years before that date:

Despite the repeal of the laws referred to in Schedule 2, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, NAMFISA may exercise any power under such repealed law to investigate and prosecute any breach of that law, as if it were proceeding with a complaint in terms of this Act.

Applicability to SWA: Section 16 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: This Act post-dated the transfer proclamations.

Amendments: The following pre-independence South African amendment was applicable to SWA –

- *Financial Institutions Amendment Act 51 of 1988* ([RSA GG 11313](#)).

Regulations: The Act makes no provision for regulations.

The Act contains a savings clause in section 17(2) which states:

Anything done or deemed to have been done under any provision of a law repealed by subsection (1), and which could be done under a provision of this Act, shall be deemed to have been done under the last-mentioned provision.

However, this could not apply to regulations since they are not authorised by the current Act.

See also **FINANCIAL INSTITUTIONS**.