

# DEBTORS AND CREDITORS

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

**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](#)) 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.

**Regulations:** Regulations are authorised by section 16 of the Act. There is no savings clause for regulations issued under the repealed Act.

Pre-independence regulations have not been researched. 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 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:** 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.<sup>45</sup>

**Cases:** *Open Learning Group Namibia Finance CC v Permanent Secretary, Ministry of Finance & Others* 2006 (1) NR 275 (HC).

## ***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

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<sup>45</sup> In South Africa, RSA GN R.251/1983 ([RSA GG 8543](#)), which was issued after the date of transfer and was not made expressly applicable to SWA, 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).

**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**.