

FINANCE AND DEVELOPMENT

Finance and Financial Adjustments Acts Consolidation Act 11 of 1977, section 9, as amended in South Africa prior to Namibian independence

Summary: This Act ([RSA GG 5443](#)) consolidates a number of previous laws dealing with a variety of financial matters. Only section 9 was made applicable to SWA. It deals with the exemption of “Black governments, assemblies, councils and authorities” from the payment of duties, fees and other taxes, and has no relevance in independent Namibia. It has been earmarked for repeal as an obsolete law by the Law Reform and Development Commission.⁵⁴

Applicability to SWA: The Act was not generally applicable to South West Africa. The only portion of the Act made applicable to South West Africa was section 9, which was made explicitly so applicable by section 9(2) which states “This section and any amendment thereof shall apply also in territory of South West Africa, including the Eastern Caprivi Zipfel.” Section 9 was not amended in South Africa prior to Namibian independence.

Several other sections of the Act concerned specific financial transactions relevant to South West Africa, but they were not made applicable to South West Africa as laws and have no ongoing relevance.

- Section 5 requires the Administration of South West Africa to pay a contribution toward certain pensions.
- Section 21 concerns the continued applicability to SWA of certain regulations with financial implications under laws which have since been repealed.
- Section 41 allows money owed on a loan from the Administration of South West Africa to a magistrate of Rehoboth to be used for the promotion of the welfare of the residents of the “Rehoboth Gebiet”.
- Section 47 requires that the Revenue Fund of South West Africa repay amounts that were paid into it from inactive Post Office Savings Accounts under a previous SWA Ordinance.

Amendments: Certain terms in the Act were amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

Regulations: There is no provision in this section for regulations.

State Finance Act 31 of 1991

Summary: This Act ([GG 333](#)) regulates the treatment of state moneys, stamps, securities, forms having a face value or a potential value, equipment, stores and other movable goods owned or leased by the state. It also covers the defrayal of expenditure on services of the state; payments made from bank accounts maintained in respect of state monies; the recovery of losses or damages caused to the state; the powers and duties of the Treasury and the Auditor-General; the raising and repayment of loans by the state; the determination of interest rates in respect of certain debts due to the state; and the furnishing of guarantees, indemnities and securities by the government in respect of certain statutory institutions,

⁵⁴ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 36-ff.

banks, companies or juristic persons. It repeals the State Finance Act 1 of 1982 ([OG 4610](#)).

Amendments: The Act is amended by the Public Service Act 13 of 1995 ([GG 1121](#)), brought into force on 1 November 1995 by GN 210/1995 ([GG 1185](#)), and by the State Finance Amendment Act 1 of 2022 ([GG 7766](#)).

Regulations: Section 38(2) is a savings clause which states:

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

However, since this Act makes no provision for regulations, any regulations made under the repealed laws would not survive.

State of Emergency Covid-19: Finance Regulations suspending certain provisions of section 9(2) of this Act were issued in terms of the President's emergency powers under the Namibian Constitution in Proc. 14/2020 ([GG 7182](#)). These regulations stated in their entirety:

Despite the provisions of section 9(2) of the State Finance Act, 1991 (Act No. 31 of 1991), the Minister of Finance is empowered to authorise the withdrawal of an amount of money exceeding three percent of the total amount appropriated by the current Appropriation Act for the period from 9 April 2020 to 30 June 2020 in order to defray expenditure on services of a special nature as contemplated in section 9(1)(b)(ii) of the said Act.

Directives: Administrative Directive 1/2006 relating to over-expenditure is contained in GN 56/2006 ([GG 3611](#)). It calls attention to sections 6, 9, 16 and 17 of the Act.

Cases:

S v Skivikua 1991 NR 101 (HC)

Eimbeck v Inspector-General of the Namibian Police & Another 1995 NR 13 (HC) (sections 1(1), 6, 7, 17 and 21)

Babyface Civils CC Jv Hennimma Investments & Others v //Karas Regional Council & Others 2018 (1) NR 277 (HC) (section 17; tender award); upheld on appeal in *Babyface Civils CC Jv Hennimma Investments CC & Others v //Kharas Regional Council & Others* 2020 (1) NR 1 (SC).

State Repudiation (Cultura 2000) Act 32 of 1991

Summary: This Act ([GG 334](#)) provides for the repudiation of certain actions taken under laws in force prior to independence, pursuant to Article 140(3) of the Constitution. It was brought into force on 12 March 1992 by Proc. 5/1992 ([GG 366](#)). Much of the Act was declared unconstitutional in 1992, and the remainder has been earmarked for repeal as an obsolete law by the Law Reform and Development Commission.⁵⁵

Regulations: The Act makes no provision for regulations.

Notices: Proc. 5/1992 ([GG 366](#)) assigned the administration of the Act to the Minister of Finance.

Cases: Most of the Act was declared unconstitutional in *Cultura 2000 v Government of the Republic of Namibia* 1992 NR 110 (HC), 1993 NR 328 (SC). All that remains in force is section 2(1) (read with sections 1 and 7).

⁵⁵ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 77-ff.

Development Bank of Namibia Act 8 of 2002

Summary: This Act ([GG 2826](#)) establishes a Development Bank of Namibia to promote economic growth and social development through the financing of key development activities. It was brought into force on 15 May 2003, with the exception of sections 21 and 22, by GN 99/2003 ([GG 2978](#)).

Section 21 of the Act, which repeals the Development Fund of South West Africa/Namibia Act 29 of 1987, was brought into force on 14 July 2005 by GN 76/2005 ([GG 3459](#)).

Section 22, which repeals the Namibia Development Corporation Act 18 of 1993, was never brought into force and was subsequently repealed by the Namibia Industrial Development Agency Act 16 of 2016 (GG 6202), which was brought into force in relevant part on 15 November 2018 by GN 295/2018 ([GG 6767](#)), and which also repeals the Namibia Development Corporation Act 18 of 1993.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and later re-named the Public Enterprises Governance Act 2 of 2006, amends section 9 and 13.

The Namibia Industrial Development Agency Act 16 of 2016 ([GG 6202](#)), which was brought into force in relevant part on 15 November 2018 by GN 295/2018 ([GG 6767](#)), repeals section 22 (which was never brought into force).

Regulations: Regulations are authorised by section 19 of the Act, but none have yet been promulgated. There is no savings clause for regulations issued under the repealed Act.

Application of law: The Financial Intelligence Act 13 of 2012 ([GG 5096](#)) places certain duties on the Development Bank of Namibia.

Notices: GN 77/2005 ([GG 3459](#)) transfers the assets, liabilities, rights and obligations of the Development Fund of South West Africa/Namibia to the Development Bank of Namibia with effect from 14 July 2005.

Appointments: Appointments to the Board of the Development Bank of Namibia are announced in GN 177/2018 ([GG 6680](#)) and GN 224/2021 ([GG 7660](#)).

INTERNATIONAL LAW

African, Caribbean and Pacific (ACP) – European Union (EU) Partnership Agreement, Cotonou (Cotonou Agreement), 2000

Amendment to the Partnership Agreement, Luxembourg, 2005

Amendment to the Partnership Agreement, Ouagadougou, 2010

Agreement Establishing the African Development Bank, 1963

Agreement Establishing the International Fund for Agricultural Development, 1976

Agreement Establishing the NORSAD Fund and the NORSAD Agency (with Statutes of the NORSAD Fund and Statutes of the NORSAD Agency), 1990

Agreement for the Establishment of the African Export-Import Bank (Afreximbank), 1993

***Agreement to Establish the South Centre, 1994*

Articles of Agreement of the International Bank for Reconstruction and Development (IBRD), 1944

Articles of Agreement of the International Finance Corporation (IFC), 1955

Articles of Agreement of the International Monetary Fund (IMF), 1944

†Constitution of the United Nations Industrial Development Organization (UNIDO), 1979

Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part, 2016 (published in Proc. 2/2017, [GG 6237](#))

SADC Protocol on Finance and Investment, 2006

Treaty Establishing the African Economic Community (AEC), 1991

Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament, 2001
Treaty of the Southern African Development Community (SADC), 1992
Protocol to the Treaty establishing SADC on Immunities and Privileges, 1992

See also Agricultural Bank of Namibia Act 5 of 2003 (**AGRICULTURE**).

See also Environment Investment Fund of Namibia Act 13 of 2001 (**ENVIRONMENT**).

See also **FINANCIAL INSTITUTIONS**.

See also Lotteries Act 15 of 2002 and the Lotteries Act 13 of 2017 (**GAMBLING**).

See also National Housing Enterprise Act 5 of 1993 and National Housing Development Act 28 of 2000 (**LAND AND HOUSING**).

See also Trust Fund for Regional Development and Equity Provisions Act 22 of 2000 (**REGIONAL AND LOCAL GOVERNMENT**).

See also **REVENUE**.

See also Road Fund Administration Act 18 of 1999 (**ROADS AND ROAD TRANSPORTATION**).

See also **TENDERS**.

See also the National Youth Service Act 6 of 2005 (Youth Service Fund) and the National Youth Council Act 6 of 2005 (Youth Development Fund) (**YOUTH**).