

# INSOLVENCY

---

## *Insolvency Act 24 of 1936*, as amended in South Africa to November 1979

**Summary:** This Act ([SA GG 2365](#)) governs insolvent persons and their estates. It details the sequestration procedure, and the rights of various creditors. The Act came into force in SWA on 1 July 1943 when the SA Insolvency Law Amendment Act 19 of 1943 ([SA GG 3180](#)) was brought into force in SWA by SA Proc. 112/1943 ([SA GG 3209](#)). It repealed the Insolvency Ordinance 7 of 1928 and its amendments (Act 16 of 1943, s. 38).

**Applicability to SWA:** Section 1 defines “Republic” to include “the mandated territory of South West Africa,” and “Gazette” and “Supreme Court” are defined accordingly. Section 158*ter* states “This Act and any amendment thereof shall apply also in the Territory, including that portion of the Territory known as the Eastern Caprivi Zipfel and referred to in sub-section (3) of section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).”

**Transfer of administration to SWA:** The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. The only South African amendment made applicable to SWA after the date of transfer was the *Insolvency Amendment Act 78 of 1980*, which was applied to SWA by Act 18/1980 ([OG 4292](#)).

Section 3(1)(a) of the transfer proclamation excluded the references to the “Republic” in the Act from the operation of section 3(1) of the General Proclamation, except where this word occurs for the second and third times in section 148 of the Act. This means that the designated references to “Republic” in section 148 were to be construed as references to the Territory only, while elsewhere “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

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

- *Finance Act 17 of 1938* ([SA GG 2572](#))
- *Income Tax Act 25 of 1940* ([SA GG 2764](#))
- *Income Tax Act 31 of 1941* ([SA GG 2906](#))
- *Hire-Purchase Act 36 of 1942* ([SA GG 3050](#))
- *Insolvency Law Amendment Act 16 of 1943* ([SA GG 3180](#))
- *Insurance Act 27 of 1943* ([SA GG 3191](#))
- *Merchant Shipping Act 57 of 1951* ([SA GG 4684](#))
- *General Law Amendment Act 32 of 1952* ([SA GG 4856](#))
- *General Law Amendment Act 62 of 1955* ([SA GG 5512](#))
- *General Law Amendment Act 50 of 1956* ([SA GG 5703](#))
- *SA Proclamation 229 of 1956* ([SA GG 5757](#))
- *Farmers’ Assistance Amendment Act 16 of 1960* ([SA GG 6402](#))
- *Finance Act 64 of 1960* ([SA GG 6462](#))
- *SA Proclamation R.210 of 1960* ([SA GG 6479](#))
- *Income Tax Act 80 of 1961* ([RSA GG 37](#))
- *RSA Proclamation R.159 of 1961* ([RSA GG 136](#))
- *Income Tax Amendment Act 6 of 1963* ([RSA GG 438](#))
- *Insolvency Amendment Act 99 of 1965* ([RSA GG 1171](#))
- *RSA Proclamation R.155 of 1971* ([RSA GG 3179](#))
- *Insolvency Amendment Act 6 of 1972* ([RSA GG 3407](#))
- *Income Tax Act 90 of 1972* ([RSA GG 3593](#))
- *RSA Proclamation R.282 of 1972* ([RSA GG 3695](#))
- *RSA Proclamation R.87 of 1973* ([RSA GG 3826](#))
- *General Law Amendment Act 62 of 1973* ([RSA GG 3947](#))

- *General Law Amendment Act 29 of 1974* ([RSA GG 4220](#))
- *Income Tax Act 85 of 1974* ([RSA GG 4516](#))
- *Sales Tax Act 103 of 1978* ([RSA GG 6085](#))
- *Insolvency Amendment Act 78 of 1980* ([RSA GG 7083](#))

Section 50 of the Sales Tax Proclamation (AG 40/1978) ([OG 3774](#)) amends section 99 of this Act regarding the payment of sales tax from a sequestrated estate.

Act 18/1980 ([OG 4292](#)) makes the *Insolvency Amendment Act 78 of 1980* applicable to South West Africa.

Act 14/1985 ([OG 5114](#)) amends the Act substantially.

AG 17/1986 ([OG 5179](#)) amends Tariff A in the Second Schedule to the Act.

Proc. 12/1999 ([GG 2051](#)) substitutes Tariff A and Tariff B in the Second Schedule and the tariff of fees in the Third Schedule.

Act 12/2005 ([GG 3551](#)), which will be brought into force on a date set by the Minister of Justice, amends the Act substantially.

The Financial Institutions and Markets Act 2 of 2021 ([GG 7645](#)), which will be brought into force on a date set by the Minister of Justice, inserts a new section 104A.

**Regulations:** Pre-independence regulations have not yet been researched. Note that there is no savings clause for regulations that may have been made under the repealed Ordinance.

**Fees:** A tariff of fees is contained in GN 37/1999 ([GG 2051](#)), which withdraws RSA General Notice 681 of 1 November 1974.

#### **Cases:**

*Bekker NO v Kotzé & Another* 1994 NR 345 (HC) (section 18(3)). See also the related case of *Bekker NO v Kotzé & Another* 1994 NR 373 (HC).

*Barotti Furniture (Pty) Ltd v Moodley* 1996 NR 295 (HC)

*Commercial Bank of Namibia v Myburgh & Another* 1996 NR 330 (HC)

*JCL Civils Namibia (Pty) Ltd v Steenkamp* 2007 (1) NR 1 (HC) (secured creditor)

*Southern Engineering & Another v Council of the Municipality of Windhoek* 2011 (2) NR 385 (SC)

*Municipal Council of Windhoek v Awaseb* 2013 (1) NR 233 (HC) (section 8).

#### **Commentary:**

Law Reform and Development Commission, *Discussion Paper on Issues Relating to the Insolvency Act, 1936 (Act No. 24 of 1936)*, LRDC 32, 2015

Victoria Weyulu, "A Critical Review of Namibian Insolvency Law" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available [here](#)

Chisom Okafor, "The Revival of Small and Medium Enterprises in Namibia through an Effective Insolvency Law Regime" in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available [here](#).