

# INSURANCE

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## *War Damage Insurance and Compensation Act 85 of 1976*

**Summary:** This Act ([RSA GG 5175](#)) establishes a War Damage Fund for state insurance schemes against the risk of war damage, and for compensation for war damage on conditions determined by the Minister of Finance. “War damage” includes damage to specified property arising from “any hostile action directed against the security of the Republic”, and from attempts by the security forces of the Republic or any of its allies to suppress such hostile action, but only if the Minister of Finance declares these defensive actions to have caused war damage. This Act was earmarked for repeal as an obsolete law by the Law Reform and Development Commission in 2021,<sup>202</sup> but was not included in the Repeal of Obsolete Laws Act 12 of 2022.

**Applicability to SWA:** Section 12 states “This Act and any amendment thereof shall apply also in the territory of South West Africa.” Although amendments in South Africa would have thus been automatically applicable to South West Africa, there were 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, since there were no amendments to the Act in South Africa prior to Namibian independence, the issue of transfer does not affect the content of the Act.

**Regulations:** Regulations are authorised by section 11 of the Act. No pre-independence regulations have been located, and no post-independence regulations have been promulgated.

## *Short-term Insurance Act 4 of 1998*

**Summary:** This Act ([GG 1832](#)) regulates the short-term insurance business in Namibia. It was brought into force on 1 July 1998 by GN 142/1998 ([GG 1887](#)). This Act will be repealed by the Financial Institutions and Markets Act 2 of 2021 ([GG 7645](#)), which has not yet been brought into force.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.

**Repeals:** This Act replaces the portions of the *Insurance Act 27 of 1943* dealing with short-term insurance.

**Amendments:** The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 ([GG 2521](#)), which was brought into force on 14 May 2001 by GN 85/2001 ([GG 2528](#)), amends section 1 and substitutes section 4.

Act 13/2016 ([GG 6183](#)) amends sections 1 and 54 and substitutes section 10.

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 Schedule 2.

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<sup>202</sup> Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 84-ff.

**Savings:** Section 72(2) contains a general savings clause:

Any policy relating to short-term insurance business issued and any other thing done under a provision of any law repealed by subsection (1), and which could have been issued or done under a provision of this Act, shall be deemed to have been issued or done under the corresponding provision of this Act.

**Regulations:** Regulations made in terms of previous legislation survive in terms of section 72(2) of the current Act, but all of the surviving regulations appear to have been repealed by the regulations made under the current Act insofar as they relate to short-term insurance.

Regulations made under the current Act are contained in GN 143/1998 ([GG 1887](#)), as amended by GN 194/2018 ([GG 6688](#)). These regulations repeal the regulations made in terms of the previous Act insofar as they relate to short-term insurance.<sup>203</sup>

**Application of law:** See the notices issued under the Namibia National Reinsurance Corporation Act 22 of 1998.

**Notices:** A declaration in terms of section 25(3) is contained in GN 10/2003 ([GG 2909](#)).

GN 15/2015 ([GG 5668](#)), which revokes GN 123/2007 ([GG 3877](#)), determines the percentage of value of each reinsurance contract to be ceded by way of reinsurance to the Namibia National Reinsurance Corporation in respect of all classes of reinsurance business specified in Schedule 1 of the Act.

General Notice 220/2014 ([GG 5510](#)) emphasises the fact that section 60 of the Act prohibits the conditional sale of insurance products by insurance entities together with banking institutions, furniture stores, motor dealers and micro-lenders. The Notice explains:

Conditional selling is when a transaction is completed if certain conditions are met as agreed by one or both parties. In this instance the condition is that, the insurance policy is taken out with only a certain insurer and the consumer does not have freedom of choice with whom to take out an insurance policy... NAMFISA hereby notifies the public that, should an insurance entity or any institution not allow any person to freely choose his/her own insurer from the beginning of the insurance related transaction such an institution should be reported to the Registrar of short-term insurance...

Notices relating to specific insurers have not been recorded.

**Appointments:** Appointments to the Short-term Insurance Advisory Committee are announced in GN 155/2018 ([GG 6666](#)).

**Cases:** *Chief Executive Officer of Namibia Financial Institutions Supervisory Authority v Legal Shields Namibia Ltd* 2005 NR 151 (HC).

**Commentary:** Clever Mapaire, “Materiality and (non)-disclosure in Namibian Insurance Law: Revisiting old principles in the context of new juristic positions”, *UNAM Law Review*, Volume 1, Issue 2, 2013, available [here](#).

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<sup>203</sup> These regulations repeal the following regulations insofar as they relate to short-term insurance business: RSA GN R.1285 of 27 August 1965, R.252 of 23 February 1968, R.2036 of 2 November 1973, R.2489 of 28 December 1973, R.1442 of 20 August 1976, R.333 of 1 March 1977, R.838 of 20 May 1977, R.1249 of 8 July 1977, R.2274 of 4 November 1977, R.947 of 12 May 1978, R.1631 of 11 August 1978, R.120 of 26 January 1979, R.353 of 20 February 1981, R.396 of 27 February 1981, R.905 of 24 April 1981, R.2046 of 2 October 1981, R.446 of 4 March 1983, R.2145 of 28 September 1984, R.81 of 18 January 1985, R.2117 of 20 September 1985, R.2324 of 18 October 1985, R.431 of 14 March 1986, R.949 of 16 May 1986, R.2584 of 12 December 1986, R.2628 of 12 December 1986, R.2288 of 16 October 1987, R.2501 of 9 December 1988, R.1345 of 30 June 1989, R.1447 of 7 July 1989, R.1922 of 1 September 1989 and 59 of 24 March 1995.

## Long-term Insurance Act 5 of 1998

**Summary:** This Act ([GG 1834](#)) regulates the long-term insurance business in Namibia. It was brought into force on 1 July 1998 by GN 144/1998 ([GG 1888](#)). 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.

**Repeals:** This Act replaces the portions of the *Insurance Act 27 of 1943* remaining after the repeal of parts of that Act by the Short-term Insurance Act 4 of 1998.

**Amendments:** 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 and substitutes section 4.

Act 2/2011 ([GG 4731](#)) amends section 72.

Act 12/2016 ([GG 6182](#)) amends sections 1 and 56 and substitutes section 10.

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 Schedule 1.

**Savings:** Section 73(2) contains a general savings clause:

Any policy relating to long-term insurance business issued and any other thing done under a provision of any law repealed by subsection (1), and which could have been issued or done under a provision of this Act, shall be deemed to have been issued or done under the corresponding provision of this Act.

**Regulations:** Regulations made in terms of previous legislation survive in terms of section 73(2) of the current Act, but all of the surviving regulations appear to have been repealed by the regulations made under the current Act.

Regulations made under the current Act are contained in GN 145/1998 ([GG 1888](#)), as amended by GN 47/2000 ([GG 2274](#)), GN 143/2001 ([GG 2579](#)), GN 31/2008 ([GG 3985](#)), GN 126/2013 ([GG 5205](#)), GN 350/2003 ([GG 5383](#)) and GN 195/2018 ([GG 6688](#)). However, note that GN 350/2003 withdraws GN 126/2013 with effect from its publication date, as if it never existed. These regulations repeal the regulations made in terms of the previous Act insofar as they were unrepealed by the Short-Term Insurance Regulations.<sup>204</sup>

**Application of law:** See the notices issued under the Namibia National Reinsurance Corporation Act 22 of 1998.

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<sup>204</sup> The repealed regulations are those published in RSA GN R.1285 of 27 August 1965, R.252 of 23 February 1968, R.2036 of 2 November 1973, R.2489 of 28 December 1973, R.1442 of 20 August 1976, R.333 of 1 March 1977, R.838 of 20 May 1977, R.1249 of 8 July 1977, R.2274 of 4 November 1977, R.947 of 12 May 1978, R.1631 of 11 August 1978, R.120 of 26 January 1979, R.353 of 20 February 1981, R.396 of 27 February 1981, R.905 of 24 April 1981, R.2046 of 2 October 1981, R.446 of 4 March 1983, R.2145 of 28 September 1984, R.81 of 18 January 1985, R.2117 of 20 September 1985, R.2324 of 18 October 1985, R.431 of 14 March 1986, R.949 of 16 May 1986, R.2584 of 12 December 1986, R.2628 of 12 December 1986, R.2288 of 16 October 1987, R.2501 of 9 December 1988, R.1345 of 30 June 1989, R.1447 of 7 July 1989, R.1922 of 1 September 1989 and 59 of 24 March 1995.

**Notices:** National standards developed by the Long-Term Insurance Industry are published for public comment and general information in General Notice 228/2002 ([GG 2805](#)).

A declaration in terms of section 25(3) is contained in GN 11/2003 ([GG 2909](#)).

General Notice 220/2014 ([GG 5510](#)) emphasises the fact that section 62 of the Act prohibits the conditional sale of insurance products by insurance entities together with banking institutions, furniture stores, motor dealers and micro-lenders. The Notice explains:

Conditional selling is when a transaction is completed if certain conditions are met as agreed by one or both parties. In this instance the condition is that, the insurance policy is taken out with only a certain insurer and the consumer does not have freedom of choice with whom to take out an insurance policy... NAMFISA hereby notifies the public that, should an insurance entity or any institution not allow any person to freely choose his/her own insurer from the beginning of the insurance related transaction such an institution should be reported to the Registrar of short-term insurance...

GN 16/2015 ([GG 5668](#)) determines the percentage of value of each reinsurance contract to be ceded by every registered insurer and registered reinsurer to the Namibia National Reinsurance Corporation in respect of all classes of reinsurance business specified in section 13(1) of the Act.

Notices relating to specific insurers have not been recorded.

**Appointments:** Appointments to the Long-term Insurance Advisory Committee are announced in GN 155/2018 ([GG 6666](#)).

**Cases:**

*Channel Life Namibia Limited v Finance in Education (Pty) Ltd* 2004 NR 125 (HC)

*Otto v Channel Life Namibia Ltd & Another* 2007 (1) NR 328 (HC), *Channel Life Namibia Ltd v Otto* 2008 (2) NR 432 (SC) (section 54(1))

*Ex Parte Momentum Group Ltd & Another* 2007 (2) NR 453 (HC) (section 36)

See also *Wilke NO v Swabou Life Assurance Company Limited* 1997 NR 224 (HC), confirmed in *Wilke NO v Swabou Life Assurance Company Limited* 2000 NR 23 (HC), which concerns section 63(3) of the previous *Insurance Act 27 of 1943*.

**Commentary:** Clever Mapaire, “Materiality and (non)-disclosure in Namibian Insurance Law: Revisiting old principles in the context of new juristic positions”, *UNAM Law Review*, Volume 1, Issue 2, 2013, available [here](#).

## Namibia National Reinsurance Corporation Act 22 of 1998

**Summary:** This Act ([GG 1949](#)) provides for the establishment of the Namibia National Reinsurance Corporation (known as “NamibRe”) to carry on reinsurance business in Namibia. It was brought into force on 1 July 1999 by GN 108/1999 ([GG 2129](#)).

Certain provisions of regulations and notices issued under the Act were challenged by the insurance industry in court. At one stage, the application and implementation of the “impugned provisions” of the Act were stayed pending the determination of the relevant cases, by *Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others* 2018 (4) NR 1133 (HC), but the Supreme Court subsequently overturned this stay in *Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others* 2020 (1) NR 60 (SC).<sup>205</sup> The challenged notices and regulations were replaced before the underlying court case went forward.

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<sup>205</sup> See also *Minister of Finance & Another v Hollard Insurance Co of Namibia Ltd & Others* 2019 (3) NR 605 (SC) (judge who was petitioned for leave to appeal against order of stay should have recused himself due to his association with a past challenge to the constitutionality of the Namibia National Reinsurance Corporation Act 22

**Amendments:** The Act is amended by the Financial Institutions and Markets Act 2 of 2021 ([GG 7645](#)), which has not yet been brought into force.

**Regulations:** Regulations relating to short-term and long-term reinsurance business are contained in GN 332/2017 ([GG 6496](#)), which repeals the regulations contained in GN 155/1999 ([GG 2160](#)).

The 2017 regulations were to come into force 180 days from their date of publication on 29 December 2017 (regulation 12), noting that “day” is defined to mean any day other than a Saturday, Sunday or public holiday (regulation 1). This means that these regulations were to come into force on 19 September 2018. However, the repeal of the 1999 regulations is contained in the text of the Government Notice and not in the regulations contained in the Schedule to the Government Notice. Thus, the repeal would appear to be effective from the date of publication of the Government Notice on 29 December 2017.

**Application of law:** The application of this Act is affected by 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. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

**Notices:** In terms of section 39(5), the percentage of value of reinsurance contracts to be ceded by every registered insurer and reinsurer is set by GN 333/2017 ([GG 6496](#)), which came into force 180 days after its publication in the *Government Gazette* on 29 December 2017. The percentage of value of each short-term insurance contract to be ceded in reinsurance to the Corporation by every registered insurer and reinsurer is set by GN 334/2017 ([GG 6496](#)), which also came into force 180 days after its publication in the *Government Gazette* on 29 December 2017. The percentage of value of each long-term insurance contract to be ceded in reinsurance to the Corporation by every registered insurer and reinsurer is set by GN 335/2017 ([GG 6496](#)), which also came into force 180 days after its publication in the *Government Gazette* on 29 December 2017.

In terms of section 39(8), certain classes of registered insurers and registered reinsurers carrying on specified classes of business are exempted from the obligation to cede reinsurance to the Corporation by GN 336/2017 ([GG 6496](#)), which also comes into force 180 days after its publication in the *Government Gazette* on 29 December 2017.

In terms of section 43(2), the rates of commission payable to registered short-term insurers and reinsurers are set by GN 337/2017 ([GG 6496](#)), which also comes into force 180 days after its publication in the *Government Gazette* on 29 December 2017. The rates of commission payable to registered long-term insurers and reinsurers are set by GN 338/2017 ([GG 6496](#)), which also comes into force 180 days after its publication in the *Government Gazette* on 29 December 2017.

**Past notices:** The following account of the repeal of certain past notices issued under the Act is based in part on information helpfully provided to the authors by NamibRe:

In terms of section 39(5) of the Act, the percentage of value of reinsurance contracts to be ceded was initially set by GN 109/1999 ([GG 2129](#)), which was subsequently replaced by GN 3/2003 ([GG 2893](#)) (which revoked GN 109/1999 with retrospective effect). GN 3/2003 was revoked and replaced by GN 123/2007 ([GG 3877](#)), with respect to reinsurance businesses specified in Schedule 1 of the Short-Term Insurance Act 4 of 1998. GN 123/2007 was replaced by GN 15/2015 ([GN 5668](#)). The percentage of value of reinsurance contracts to be ceded was set by GN 16/2015 ([GN 5668](#)), with respect to reinsurance businesses specified in the Long-Term Insurance Act 5 of 1998. GN 15/2015 and GN 16/2015 were both revoked and replaced by GN 266/2016 ([GG 6165](#)), as amended by GN 291/2016 ([GG 6194](#)) (which changed the effective date of GN 266/2016 to 3 January 2017). GN 266/2016 was subsequently withdrawn by GN 25/2017 ([GG 6238](#)).

In terms of section 39(2), classes of insurance business and percentage of value of policies to be ceded was initially set by GN 110/1999 ([GG 2129](#)), which was revoked with retrospective effect by GN 4/2003 ([GG 2893](#)).

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of 1998, which was relevant to the case at hand).



In terms of section 43(2), the rate of reinsurance commission payable in respect of insurance business ceded or offered to the Namibia National Reinsurance Corporation was initially set by GN 111/1999 ([GG 2129](#)), which was subsequently replaced in its entirety by GN 46/2000 ([GG 2274](#)). GN 46/2000 was replaced by GN 124/2007 ([GG 3877](#)), which was replaced in turn by GN 267/2016 ([GG 6165](#)) with effect from 1 January 2017. GN 267/2016 was subsequently withdrawn by GN 25/2017 ([GG 6238](#)).

The effective date for the three initial notices in terms of the Act, GN 109-111/1999, was initially set as 1 September 1999, changed to 1 November 1999 by GN 183-185/1999 ([GG 2179](#)), then changed to 1 January 2000 by GN 245-247/1999 ([GG 2224](#)), then to 1 April 2000 by GN 8-10/2000 ([GG 2259](#)), then to 17 April 2000 by GN 44-46/2000 ([GG 2274](#)), then to 22 August 2000 by GN 150-152/2000 ([GG 2354](#)), then to 1 October 2000 by GN 203-205/2000 ([GG 2399](#)), then to 1 November 2000 by GN 238-240/2000 ([GG 2417](#)), then to 1 February 2001 by GN 265-267/2000 ([GG 2439](#)). A further change to the effective date was made by GN 2-4/2003 ([GG 2893](#)), which applied retrospectively and changed the relevant date for these notices to 1 January 2002. GN 2/2003 ([GG 2893](#)) was revoked by GN 124/2007 ([GG 3877](#)), which came into effect 60 days after its publication on 16 July 2007. The overall effect is that the successive postponements of Government Notices 109-111/1999 meant that none of them came into force before they were revoked.

GN 266/2016 and GN 267/2016 ([GG 6165](#)) (the “2017 notices”) were to become effective from 3 January 2017. As indicated above, these notices “revoked” the previous GN 15/2015 and GN 16/2015 ([GN 5668](#)) (the “2015 notices”) with effect from 1 January 2017. However, in December 2016, before the “2017 notices” came into force, they were challenged by the insurance industry of Namibia on procedural and substantive grounds. Following extensive consultations regarding procedural flaws in the 2017 notices, a decision was taken to withdraw the “2017 notices” and to promulgate fresh notices. The “2017 notices” were subsequently “withdrawn” with effect from 15 February 2017 by GN 25/2017 ([GG 6238](#)).

Despite the use of the terms “revoke” and “withdraw” in contrast to “repeal”, NamibRe is of the opinion that section 11(2) of the Interpretation of Laws Proclamation 37 of 1920 applies, with the result that none of the revocations and withdrawals of the notices listed here had any effect on their repeal of previous notices, because no contrary intention appears either expressly or impliedly.

This principle also applies to Government Notice 124/2007 ([GG 3877](#)) which was “revoked” by Government Notice 267/2016 ([GG 6165](#)) with effect from 1 January 2017 – meaning that Government Notice 124/2007 remains revoked despite the subsequent “withdrawal” of GN 267/2016 with effect from 15 February 2017 by Government Notice 25/2017 ([GG 6238](#)). However, for the avoidance of any doubt, Government Notice 333/2017 ([GG 6496](#)) expressly revokes GN 124/2007 effective from 1 January 2017.

**Appointments:** Members of the Board are announced in GN 112/1999 ([GG 2129](#)), GN 190/2002 ([GG 2845](#)), GN 17/2006 ([GG 3577](#)), GN 49/2017 ([GG 6262](#)), GN 90/2018 ([GG 6595](#)) and GN 210/2021 ([GG 7647](#)).

#### **Cases:**

*Namibia Insurance Association v Government of Namibia* 2001 NR 1 (HC)

*Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others* 2018 (4) NR 1133 (HC) (certain provisions of the Act, the 2017 regulations and GN 333-338/2017 stayed pending the outcome of constitutional challenges); Supreme Court subsequently overturned this interim stay in *Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others* 2020 (1) NR 60 (SC).<sup>206</sup>

*Minister of Finance v Hollard Insurance Company Namibia & Others* 2021 (2) NR 524 (SC) (although this case is an appeal of a holding on discovery, the underlying challenge to the 2017 regulations and the 2017 Government Notices issued under the Act is discussed).

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<sup>206</sup> See also *Minister of Finance & Another v Hollard Insurance Co of Namibia Ltd & Others* 2019 (3) NR 605 (SC) (judge who was petitioned for leave to appeal against order of stay should have recused himself due to his association with a past challenge to the constitutionality of the Namibia National Reinsurance Corporation Act 22 of 1998, which was relevant to the case at hand).

## Demutualisation Levy Act 9 of 2002

**Summary:** This Act ([GG 2827](#)) provides for a levy on the free reserves of mutual insurers in respect of their demutualisation.

**Regulations:** The Act makes no provision for regulations.

## Namibia Special Risks Insurance Association Act 5 of 2017

**Summary:** This Act ([GG 6420](#)) converts the Namibia Special Risks Insurance Association (NASRIA) established by the Second Finance Act 27 of 1987 ([OG 5470](#)) into a public company with a share capital, and determines what insurance business it may underwrite. It was brought into force on 1 August 2018 by GN 154/2018 ([GG 6666](#)).

**Repeals:** The Act repeals the Second Finance Act 27 of 1987.

**Regulations:** Section 38 of the Act authorises regulations, but none have yet been issued. Section 42(2) of the Act contains a savings clause for anything done in terms of the repealed Act which could have been done under this Act. However, the repealed Act did not authorise the issue of regulations.

**Application of law:** The application of the Act is affected by the Public Enterprises Governance Act 2 of 2006, which is referred to in several sections of the Act. Act 2 of 2006 has been replaced by the Public Enterprises Governance Act 1 of 2019. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

**Notices:** GN 144/2019 ([GG 6932](#)) determines that the Namibia Special Risks Insurance Association established in terms of section 21 of the Companies Act 28 of 2004 is converted into a public company with a share capital, to be known as the Namibia Special Risks Insurance Association Limited, effective from 14 June 2019.

**Declarations:** GN 142/2020 ([GG 7241](#)) contains a declaration, made under section 1(2) of the Act after consultation with the Board of the Namibia Special Risks Insurance Association Limited, that the Credit Guarantee Scheme under the Namibia Financial Sector Strategy is a special risk, subject to the conditions set out in the Schedule of that notice. (The Credit Guarantee Scheme is a government scheme which encourages funding of SMEs by providing collateral cover in favour of the participating institutions.)

See also *Export Credit and Foreign Investments Re-insurance Act 78 of 1957 (IMPORT AND EXPORT)*.