

PURCHASE AND SALE

Formalities in respect of Contracts of Sale of Land Act 71 of 1969, as amended in South Africa to April 1978  

Summary: This Act ([RSA GG 2427](#)) sets forth the necessary formalities in contracts for the sale of land or certain interests in land.

Applicability to SWA: Section 3 of the Act states “This Act and any amendment thereof shall apply also in the territory of South West Africa.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated **28 April 1978**. There were no amendments to the Act prior to its repeal in South Africa by the *Alienation of Land Act 68 of 1981* ([RSA GG 7789](#)), which was not made applicable to SWA.

Regulations: The Act makes no provision for regulations.

Cases: *Mack v Uni-Signal (Pty) Ltd* 1993 NR 304 (HC); *Hayley Fay t/a Hayley Fay Properties v Uptown Property Investment CC & Others* 2016 (3) NR 893 (HC) (section 2).

Sale of Land on Instalments Act 72 of 1971, as amended in South Africa to April 1978  

Summary: This Act ([RSA GG 3175](#)) regulates the purchase and sale of residential land, where payments are to be made in instalments over a period of at least one year.

Applicability to SWA: Section 19 of the Act 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: The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated **28 April 1978**.

Section 3(2)(b) of the transfer proclamation stated that the reference to the “Minister” in section 2(b)(i) of the Act should be construed as including a reference to the Administrator-General (rather than being construed as the Administrator-General only).

The only amendment to the Act in South Africa after the date of transfer – the *Sale of Land on Instalment Amendment Act 74 of 1978* ([RSA GG 6049](#)) – was not made expressly applicable to SWA.

Like the *Formalities in Respect of Contracts of Sale of Land Act 71 of 1969*, this Act was replaced in South Africa by the *Alienation of Land Act 68 of 1981* ([RSA GG 7789](#)), which was not made applicable to SWA.

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

- *Sale of Land on Instalments Amendment Act 72 of 1972* ([RSA GG 3571](#))
- *Sale of Land on Instalments Amendment Act 49 of 1975* ([RSA GG 4738](#))
- *Sale of Land on Instalments Amendment Act 25 of 1976* ([RSA GG 5041](#)).

Section 4 of the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978) ([OG 3743](#)) amends section 2 of the Act.

The Native Laws Amendment Proclamation (AG 3/1979) ([OG 3898](#)) amends certain terminology.

Regulations: The Act makes provision only for regulations which set the maximum rate of interest from time to time in respect of contracts governed by the Act. The regulations setting such rates have not been researched.

Credit Agreements Act 75 of 1980, as amended in South Africa to May 1981

Summary: This Act ([RSA GG 7073](#)). It regulates transactions where movable goods are purchased or leased on credit. It also applies to services rendered on credit. It repeals the *Hire-Purchase Act 36 of 1942*.

Applicability to SWA: Section 30 of the Act, as substituted by the Credit Agreements Proclamation, AG 17 of 1981 ([OG 4472](#)), states “This Act shall be called the Credit Agreements Act, 1980, and shall come into operation on the date on which the Credit Agreements Proclamation, 1981, of the Administrator-General is published in the *Official Gazette*.” Section 1 of the Credit Agreements Proclamation, AG 17 of 1981, states “Subject to the provisions of this Proclamation, the Credit Agreements Act, 1980 (hereinafter referred to as the Act), shall apply to the territory of South West Africa.” This wording did not make subsequent amendments to the Act automatically applicable to South West Africa.

Transfer of administration to SWA: Section 4 of the Credit Agreements Proclamation AG 17 of 1981 ([OG 4472](#)), which came into force on 27 May 1981, made certain amendments to the Act which had the effect of transferring the administration of the Act to SWA. This satisfies the definition of a transfer proclamation in section 1 of the General Proclamation (“a proclamation by the Administrator-General by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General”). Furthermore, as noted above, the terms of the application of the Act to SWA do not make subsequent amendments to the Act automatically applicable to SWA. There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Credit Agreements Amendment Act 9 of 1985* ([RSA GG 9642](#)) and the *Credit Agreements Amendment Act 53 of 1987* ([RSA GG 10920](#)) – neither of which was made expressly applicable to SWA.

Amendments: The Credit Agreements Proclamation (AG 17/1981) ([OG 4472](#)) amends section 1 and section 30 of the Act.

Act 3/2016 ([GG 6043](#)) amends sections 1, 2 and 23.

Savings: There is no savings clause in respect of things done under the repealed Act.

Regulations: Regulations issued in South Africa prior to the effective date of transfer are contained in RSA GN R.401/1981 ([RSA GG 7440](#)), which was promulgated on 27 February 1981 and came into force on 2 March 1981 (pursuant to regulation 7). However, the same topics are covered by regulations issued by the Administrator-General of SWA in AG GN 68/1981 ([OG 4473](#)), which was promulgated on 27 May 1981 and came into force on 1 July 1981 (pursuant to regulation 5). (Amendments to these SWA regulations are detailed below.) Thus, although the latter SWA regulations do not explicitly repeal the earlier South African ones, the SWA regulations clearly supersede the South African ones.

All of the other regulations that could be located in South Africa were issued after the effective date of transfer; after that date, the amendments made to the Act by the Credit Agreements Proclamation AG 17 of 1981 ([OG 4472](#)) empowered only the Administrator-General of SWA to make regulations for SWA under the Act.

Thus, the only regulations that appear to be currently in force under the Act are those contained in AG GN 68/1981 ([OG 4473](#)), as amended by GN 118/1984 ([OG 4955](#)), AG GN 47/1985 ([OG 5035](#)), GN 1/1986 ([OG 5158](#)), GN 177/1992 ([GG 536](#)), GN 142/2016 ([GG 6052](#)), GN 97/2017 ([GG 6297](#)) and GN 218/2020 ([GG 7321](#)).

Application of law: AG GN 67/1981 ([OG 4473](#)), which is replaced by GN 141/2016 ([GG 6052](#)), affects the application of the Act.

Cases: *Courtney-Clarke v Bassingthwaighe* 1990 NR 89 (HC).

Commentary: HP Masake, “The Validity and Legal Implications of *Pactum Reservati Dominii* in Credit Agreements: A Namibian Perspective”, *UNAM Students Law Review*, Volume 1, Issue 1, 2013, available [here](#).

See also **LAND AND HOUSING**.

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