**INSURANCE**

**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.

**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 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. Pre-independence regulations have not been researched. 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), replacing 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) amends section 1 and substitutes section 4.

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

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

**Regulations:** Regulations made in terms of previous legislation survive in terms of section 72 of the current Act. Pre-independence regulations have not been researched. 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 a large number of regulations made in terms of the previous Act insofar as they relate to short-term insurance.

**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).


**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), replacing the remaining portions of the Insurance Act 27 of 1943.

**Amendments:** The Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (GG 2529) 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.

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

**Regulations:** Regulations made in terms of previous legislation survive in terms of section 73 of the current Act. Pre-independence regulations have not been researched

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 a large number of regulations made in terms of the previous Act insofar as they are unreppealed by the Short-Term Insurance Regulations.
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.


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 the Act have been challenged on constitutional grounds in two pending High Court cases: HC-MD-ACT-CIV-OTH-2017/04493 and HC-MD-CIV-MOT-REV-2018/00127. The application and implementation of these “impugned provisions” of the Act have been stayed pending the determination of the cases
challenging them, by Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others (HC-MD-CIV-MOT-GEN-2018/00227) NAHCMD 294 (20 September 2018). (This case does not indicate precisely which provisions of the Act are affected.)

**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 which has since been re-named the Public Enterprises Governance Act 2 of 2006.

**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.

**Note that the application of the 2017 regulations is stayed pending the outcome of two court cases challenging their constitutionality, by Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others (HC-MD-CIV-MOT-GEN-2018/00227) NAHCMD 294 (20 September 2018).**

**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 comes 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 comes 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 comes 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 is 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 is 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.

**Note that the application of Government Notices 333-338/2017 (GG 6496) is stayed pending the outcome of two court cases challenging their constitutionality, by Minister of Finance & Another v Hollard Insurance Company of Namibia Limited
In terms of section 39(5), 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 with retrospective effect GN 109/1999, as amended by GN 266/2000). 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 213/2007 was replaced by GN 15/2015 (GG 5668) (which changed the effective date of GN 266/2016 to 3 January 2017). However, GN 266/2016 was revoked and replaced by GN 123/2007 (GG 3877), 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). However, GN 266/2016 was 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).

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. However, GN 267/2016 was 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 set at 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 upshot is that none of the pre-2017 notices listed here appear to remain in force in 2017, aside from the portions of GN 3/2003 (GG 2893) which were not revoked by GN 123/2007 (GG 3877) (ie, its application to any insurer or reinsurer other than those classes of reinsurance businesses specified in Schedule 1 of the Short-Term Insurance Act 4 of 1998). The 2017 notices do not repeal any remaining portions of GN 3/2003, although they may supersede it when they come into force.

The following description of the recent history these notices comes from Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others (HC-MD-CIV-MOT-GEN-2018/00227) NAHCMD 294 (20 September 2018) (footnotes omitted):

“[15] It is not disputed that the Minister is empowered by the Act to make regulations and to issue notices with a view to giving effect to the objects of the Act. In exercise of that power, the Minister, in November and December 2016, caused certain notices to be issued and gazetted, namely notices numbers 266, 267 and 291. These notices dealt with the compulsory cession of insurance contracts and reinsurance business and related matters. A challenge to the issuance of these notices was mounted by the respondents, who brought an application for review before this court, in which they seek to have the said notices set aside. [Hollard Insurance Company of Namibia
The Minister, in view of the challenge, decided to withdraw the said notices and opted to engage in a public consultation process on the issue. In this regard, interested parties were required to make representations in writing.”

**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) and GN 90/2018 (GG 6595).

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

**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. The Act, which was brought into force on 1 August 2018 by GN 154/2018 (GG 6666), repeals the Second Finance Act 27 of 1987.

**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 this Act.

**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.

**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.

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