

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 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. 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).

Commentary: Clever Mapaure, “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 at <http://unamlawreview.info>.

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 unrepealed 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*.

Commentary: Clever Mapaure, “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 at <http://unamlawreview.info>.

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 was stayed pending the determination of the relevant cases, 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); but the Supreme Court subsequently overturned this interim stay in *Minister of Finance & Others v Hollard Insurance Company of Namibia Limited & Others* (20 September 2018), case no: SA 19/2019. The challenged notices and regulations were replaced before the underlying court cases went forward.

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.

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.

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 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.

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](#)).

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](#)) and GN 90/2018 ([GG 6595](#)).

Cases:

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

Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others (HC-MD-CIV-MOT-GEN-2018/00227) NAHCMD 294 (20 September 2018) (certain provisions of the Act, the 2017 regulations and GN 333-338/2017 stayed pending the outcome of constitutional challenges).

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 the Act. Act 2 of 2006 has been replaced by the Public Enterprises Governance Act 1 of 2019.

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.

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)*.