

South Africa

War Damage Insurance and Compensation Act, 1976

Act 85 of 1976

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War Damage Insurance and Compensation Act, 1976

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War Damage Insurance and Compensation Act, 1976

Act 85 of 1976

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[Amended by [General Law Amendment Act, 1996 \(Act 49 of 1996\)](#) on 4 October 1996]

(English text signed by the State President.)

Act

To provide for the establishment of a War Damage Fund; for State insurance against the risk of war damage and for the payment of compensation and the issue of guarantees by the State in respect of such damage; and to provide for matters connected therewith.

1. Definitions

In this Act, unless the context otherwise indicates—

"**financial year**" means a year ending on 31 March;

"**fund**" means the War Damage Fund referred to in section 2;

"**Minister**" means the Minister of Finance;

"**prescribed**" means prescribed by regulation;

"**Treasury**" means the Treasury as defined in section 1(1) of the Exchequer and Audit Act, 1975 ([Act No. 66 of 1975](#));

"**war damage**" means—

- (a) any damage or loss sustained or expenditure incurred, amounting to not less than fifty rand, in respect of—
 - (i) any merchant vessel which is a South African ship as defined in section 2(1) of the Merchant Shipping Act, 1951 ([Act No. 57 of 1951](#)), or which is owned by a company of which all the shares are held by shareholders within the Republic, irrespective of whether such merchant vessel was within or outside the territorial waters of the Republic at the time when the damage or loss was sustained or the expenditure was incurred;
 - (ii) any commercial aircraft which is a South African aircraft as defined in section 1 of the Aviation Act, 1962 ([Act No. 74 of 1962](#)), irrespective of whether such commercial aircraft was in or over the Republic or the territorial waters thereof or elsewhere at the time when the damage or loss was sustained or the expenditure was incurred;
 - (iii) any cargo on board such merchant vessel or commercial aircraft; or
 - (iv) any prescribed property in the Republic, and arising from any hostile action directed against the security of the Republic, in which use is made of weapons other than nuclear weapons by the enemy or by the armed forces of the Republic or an ally of the Republic;

- (b) any other damage, loss or expenditure, amounting to not less than fifty rand, sustained or incurred during any hostile action directed against the security of the Republic and arising from—
 - (i) the use of any weapon employing atomic or nuclear fission or fusion, or from capture, seizure, arrest, restraint, detention, requisition, pre-emption, violence, or political action of a hostile nature; or
 - (ii) the prevention or suppression, by the armed or police forces of the Republic or an ally of the Republic, of any action referred to in subparagraph (i); or
 - (iii) any attempt at any action referred to in subparagraph (i) or (ii),and which the Minister in his discretion, by notice in the *Gazette*, declares to be war damage.

2. Establishment of War Damage Fund

The Minister may, as often as in his opinion there is a possibility of war damage arising, establish a fund, to be known as the War Damage Fund, which shall be a juristic person and shall be credited with—

- (a) premiums received in respect of contracts for insurance entered into, and guarantees issued, in terms of the provisions of section 3;
- (b) money appropriated for this purpose by Parliament or any other legislative authority in the Republic;
[paragraph (b) amended by section 1 of Act 49 of 1996]
- (c) interest received from the investment of money at the disposal of the fund; and
- (d) money accruing to the fund from any other source.

3. War damage insurance and compensation

- (1) The Minister may by notice in the *Gazette*, on such terms and conditions as may be determined by him and specified in such notice, establish any scheme or schemes whereunder such persons as may be specified in such notice—
 - (a) may obtain, by virtue of a contract for insurance with the fund, insurance against the risk of war damage;
 - (b) may be compensated by the fund for war damage;
 - (c) may obtain a Government guarantee for the payment by the fund of compensation for any war damage which they may sustain; and
 - (d) may obtain a Government guarantee for the payment by the fund of the amount or any part of the amount representing the difference between the normal premium payable in respect of insurance against the risk of loss of, damage to or expenditure in connection with property, and any higher premium which may be payable in respect of such insurance in the case where such loss, damage or expenditure arises from the use of any weapon employing atomic or nuclear fission or fusion, or from any other hostile action directed against the security of the Republic, capture, seizure, arrest, restraint, detention, requisition, pre-emption, violence, or political action of a hostile nature, or from an attempt at any of such actions.
- (2) The Minister may, for the purposes of subsection (1), differentiate between—
 - (a) different kinds of property in respect of which a scheme has been established;
 - (b) different persons to which such a scheme relates;
 - (c) different regions or areas;

- (d) different kinds of war damage to which such a scheme relates; and
- (e) different schemes according to the period for which the property in question is insured.

4. Utilization of money of fund

The money of the fund shall be utilized—

- (a) for the defraying of war damage to property insured under a contract of insurance entered into by virtue of the provisions of section 3(1)(a);
- (b) for the payment of compensation by virtue of the provisions of section 3(1)(b);
- (c) for the meeting of liabilities arising from any guarantee issued by virtue of the provisions of section 3(1)(c) or (d); and
- (d) for the defraying of costs incidental to the administration of this Act.

5. Limited meeting of funds liabilities

If in any financial year the liabilities of the fund exceed its revenue or the Minister is of the opinion that this is likely to happen—

- (a) the Minister may limit payments by the fund and may from time to time determine a basis according to which the liabilities of the fund shall be met by means of annual interest-free instalments;
- (b) the Minister shall, if he acts in terms of paragraph (a), lay upon the Tables of both Houses of Parliament a report on the matter in such form as he may deem fit and in which he shall recommend that money be appropriated by Parliament so as to enable the fund to meet its liabilities in accordance with the basis determined by the Minister under paragraph (a).

6. Utilization of money paid by fund

The Minister may in his discretion require that an amount of money paid by the fund in terms of a scheme referred to in section 3, or such part of such amount as may be determined by him, shall be utilized for the repair or replacement, to the satisfaction of the Minister, of that war-damaged property in respect of which the payment was made, or for such other purpose as he may approve, and may take such steps as may be necessary in order to ensure that the said amount or part thereof is so utilized.

7. Administration of schemes and control of fund

- (1) Subject to the provisions of subsection (2)—
 - (a) the Treasury shall control the fund and administer any scheme established under section 3;
 - (b) the Treasury shall keep a proper record of all the financial transactions, assets and liabilities of the fund and shall prepare, as soon as possible after the end of each financial year, accounts of the revenue and expenditure of the fund for such year and a balance sheet of its assets and liabilities as at the end of that year:

Provided that the Minister—

- (i) may establish a committee, to be known as the War Damage Insurance Committee, to assist the Treasury in the execution of the duties imposed upon the Treasury by this Act and to perform on behalf of the Treasury such further functions as the application of this Act may entail and which the Minister may determine;
- (ii) may appoint such persons as he may deem fit, as members of the said committee on such conditions as he may determine at the time of their appointment.

- (2) The Minister or, subject to his approval, the Treasury or the War Damage Insurance Committee referred to in subsection (1), may enter into an agreement with any person by virtue of which such person undertakes, at such remuneration as may be provided for in such agreement, to assess any damage which the fund is required to compensate, and to perform any other work arising from the application of this Act or from any insurance effected under this Act.

8. Banking account and audit

- (1) A banking account in the name of the fund shall be kept with the South African Reserve Bank.
- (2) The accounts and balance sheet referred to in section 7(1)(b) shall be audited by the Auditor-General.

9. Investment of money not immediately required

- (1) Any money of the fund which is not required for immediate use, shall be invested with the Public Debt Commissioners or with a financial institution approved by the Minister and may be withdrawn when required.
- (2) Any unexpended balance of the money of the fund at the end of any financial year shall be carried forward as a credit of the fund to the next succeeding financial year.

10. Dissolution of fund

- (1) The Minister may, when he, having regard to the purpose for which the fund was established, is satisfied that the continued existence of the fund is no longer justified, dissolve the fund by notice in the *Gazette*.
- (2) Any unexpended balance of the money of the fund, whether or not it is invested in terms of section 9, standing to the credit of the fund at the date of such dissolution, shall, notwithstanding anything to the contrary contained in any other law, be paid into the State Revenue Fund.
- (3) Any liability of the fund in terms of the provisions of this Act which has not been met at the date of such dissolution, shall devolve upon the State.

11. Regulations

The Minister may make regulations as to any matter which he considers it necessary or expedient to prescribe in order that the achievement of the purposes of this Act may be promoted or facilitated.

12. ***

[section 12 repealed by section 1 of [Act 49 of 1996](#)]

13. Repeal of laws

- (1) The War Damage Insurance Act, 1941 ([Act No. 21 of 1941](#)), the War Damage Insurance Amendment Act, 1942 ([Act No. 25 of 1942](#)), and section 7 (2) of the Second Finance Act, 1948 ([Act No. 49 of 1948](#)), are hereby repealed.
- (2) Section 6 of the Finance Act, 1964 ([Act No. 76 of 1964](#)), is hereby repealed with effect from a date fixed by the State President by proclamation in the *Gazette*.

14. Short title

This Act shall be called the War Damage Insurance and Compensation Act, 1976.