

South Africa

Reinsurance of Damage and Losses Act, 1989

Act 56 of 1989

Legislation as at 29 June 1990

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Reinsurance of Damage and Losses Act, 1989

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South Africa

Reinsurance of Damage and Losses Act, 1989

Act 56 of 1989

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Assented to on 17 May 1989

Commenced on 30 May 1989

[This is the version of this document from 29 June 1990.]

[Amended by [Reinsurance of Material Damage and Losses Amendment Act, 1990 \(Act 65 of 1990\)](#) on 29 June 1990]

[short title, previously Reinsurance of Material Damage and Losses Act, substituted by section 5 of [Act 65 of 1990](#)]

(Afrikaans text signed by the State President.)

ACT

To consolidate the laws empowering the Minister of Finance to enter into agreements with insurers binding the Government to compensate insurers in respect of certain losses or damage to property and losses in respect of mortgage loans; and to provide for incidental matters.

[long title substituted by section 4 of [Act 65 of 1990](#)]

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

1. Definitions

In this Act, unless the context indicates otherwise—

"**borrower**" means a borrower as defined in section 1 of the Usury Act, 1968 ([Act No. 73 of 1968](#));

[definition of "borrower" inserted by section 1(a) of [Act 65 of 1990](#)]

"**loss in respect of a mortgage loan**" means any financial loss suffered by a moneylender in terms of a money loan secured by a mortgage bond over immovable property situated in the Republic or in any state the territory of which previously formed part of the Republic, where—

- (a) the loss results from the moneylender being unable to recover at a sale of such property—
 - (i) in execution, whether the sale was held at the instance of the moneylender or at the instance of any other person; or
 - (ii) by public auction resulting from the insolvency of the borrower,any amount, including interest and other charges, owing in terms of the mortgage loan; and
- (b) the sale referred to in paragraph (a) is directly or indirectly related to or caused by any of the actions or circumstances contemplated in the definition of 'loss of or damage to property';

[definition of "loss in respect of a mortgage loan" inserted by section 1(a) of [Act 65 of 1990](#)]

"**loss of or damage to property**" means any loss of or damage to property related to or caused by—

- (a) any act (whether on behalf of any organization, body, person or group of persons) calculated or directed to overthrow or influence any state or government, or any provincial, local or tribal authority, with force, or by means of fear, terrorism or violence;

- (b) any act which is calculated or directed to bring about loss or damage in order to further any political aim, objective or cause, or to bring about any social or economic change, or in protest against any state or government, or any provincial, local or tribal authority, or for the purpose of inspiring fear in the public, or any section thereof;
- (c) any riot, strike or public disorder (including civil commotion, labour disturbances or lock-outs), or any act or activity which is calculated or directed to bring about a riot, strike or such disorder;
- (d) any attempt to perform any act referred to in paragraph (a), (b) or (c);
- (e) the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in paragraph (a), (b), (c) or (d);

“**Minister**” means the Minister of Finance.

“**moneylender**” means a moneylender as defined in section 1 of the Usury Act, 1968.

[definition of “moneylender” added by section 1(b) of [Act 65 of 1990](#)]

2. Minister may enter into agreement with insurer

The Minister may enter into an agreement with a registered insurer as defined in section 1 of the Insurance Act, 1943 ([Act No. 27 of 1943](#)), in terms of which he—

- (a) binds the Government of the Republic to pay to such insurer in respect of every calendar year an amount equal to the amount, as determined on the basis set forth in such agreement, of the loss, if any, sustained by the insurer in such year under policies of insurance in terms of which the insurer assumed the obligation to indemnify the owners of such policies against—
 - (i) loss of or damage to property situated in the Republic or in any state the territory of which previously formed part of the Republic;

[subparagraph (i) amended by section 2(a) of [Act 65 of 1990](#)]
 - (iA) loss in respect of a mortgage loan; or

[subparagraph (iA) inserted by section 2(b) of [Act 65 of 1990](#)]
 - (ii) consequential loss resulting from such loss or damage to the extent determined by the Minister from time to time;
- (b) binds the Government of the Republic to make loans or grant advances to such insurer of such amounts and on such terms and conditions as he may agree upon with the insurer; and
- (c) shall have the right to appoint any officer in the public service or other person as a member of the board of directors of such insurer.

3. Premiums shall be protected against creditor other than insurer

Notwithstanding anything to the contrary contained in any other law or the common law, premiums received after the commencement of the Finance Amendment Act, 1989 ([Act No. 45 of 1989](#)), by any person other than the insurer referred to in section 2 on behalf of such insurer in connection with policies of insurance referred to in section 2(a), shall not constitute an asset of such person and shall not be subject to attachment by any creditor other than the insurer referred to in section 2.

4. Restrictions of insurance against loss of or damage to property or loss in respect of mortgage loan

No person, whether as insurer or insured, shall within or outside the Republic enter into an insurance contract in terms of which the insurer assumes the obligation in respect of property situated in the Republic, including the territorial waters of the Republic, to indemnify, in terms of the policy issued by

virtue of such contract, the owner of such policy against loss of or damage to property, or against loss in respect of a mortgage loan, including consequential loss referred to in section [2\(a\)](#), unless—

- (a) the insurer is a registered insurer who has entered into an agreement contemplated in section [2](#); or
- (b) the insurer referred to in paragraph (a) has declared in writing that he is not prepared to assume such obligation or any part of such obligation or any other obligation in connection with such property, whether on the conditions contemplated in such insurance contract or on any other conditions.

[section [4](#) substituted by section 3 of [Act 65 of 1990](#)]

5. Offences

Any person contravening the provisions of section [4](#) shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

6. Repeal of laws and savings

- (1) Subject to the provisions of subsection (2) the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.
- (2) Anything done under a provision of a law repealed by subsection (1) and which could have been done under a provision of this Act, shall be deemed to have been done under the latter provision.

7. Short title

This Act shall be called the Reinsurance of Damage and Losses Act, 1989.

[short title substituted by section 5 of [Act 65 of 1990](#)]

Schedule

No. and year of law	Title	Extent of repeal
Act 94 of 1978	Finance Act, 1978	Section 6
Act 113 of 1984	Finance Act, 1984	Section 16
Act 77 of 1986	Finance Act, 1986	Section 18
Act 6 of 1987	Financial Institutions Amendment Act, 1987	Section 18
Act 45 of 1989	Finance Amendment Act, 1989	The whole