

CURRENCY AND EXCHANGES ACT 9 OF 1933

[ASSENTED TO 7 MARCH, 1933] [DATE OF COMMENCEMENT: 28 DECEMBER, 1932 but made applicable in Namibia with effect from 23 of June by Act 36 of 1950]

[Unless otherwise indicated]

as amended by

Finance Act 27 of 1940

Finance Act 43 of 1941

South African Reserve Bank Act 29 of 1944

Finance Act 57 of 1946

Finance Act 36 of 1950

Finance Act 45 of 1953

Finance Act 59 of 1956

South African Reserve Bank Amendment Act 92 of 1977

Currency and Exchanges Amendment Act 23 of 1987

Currency and Exchanges Amendment Act 8 of 1988

ACT

To amend the law relating to legal tender, currency, exchanges and banking.

1 Definitions

In this Act the expression "the principal Act" means the Currency and Banking Act, 1920 (Act 31 of 1920), as amended by the Currency and Banking Act Amendment Act, 1923 (Act 22 of 1923), and the Currency and Banking (Further Amendment) Act, 1930 (Act 26 of 1930), and any expression to which a meaning is ascribed in the principal Act shall, when used in this Act, bear the same meaning.

[All the provisions of Acts 31 of 1920, 22 of 1923 and 26 of 1930 which had not previously been repealed were repealed by the South African Reserve Bank Act, 29 of 1944.]

2 Obligation to repay loan in any particular money may be fulfilled by payment in Union legal tender

(1) Whenever in terms of any contract of loan of money the debtor is under an obligation to repay the money lent or any portion thereof or to pay any interest thereon in coins or notes or other instruments which are, or at any time were, legal tender in the Union, whether such obligation arose before or after or partly before and partly after the commencement of this Act, he may at his option fulfill such obligation by the payment of the amount which he is bound to pay in notes of the Bank or in coins which are legal tender in the Union at the time when the payment takes place (to the amount to which they are legal tender).

(2) Any person who after the commencement of this Act and before its promulgation in the *Gazette* as a law has paid any money under a contract of loan of money to which this section applies may recover from the person to whom he paid the money the difference between the amount paid by him and the amount which, in accordance with the provisions of this section, he might have elected to pay at the date when he paid the money, provided he institutes proceedings in a competent court for such recovery within three months after such promulgation.

3 to 7 inclusive.....

[Ss. 3 to 7 inclusive repealed by s. 26 (1) of Act 29 of 1944.]

8

[S. 8 substituted by s. 26 of Act 57 of 1946 and by s. 23 (1) of Act 36 of 1950 and repealed by s. 5 of Act 92 of 1977.]

8bis

[S. 8bis inserted by s. 26 of Act 57 of 1946 and repealed by s. 5 of Act 92 of 1977.]

8ter

[S. 8ter inserted by s. 26 of Act 57 of 1946, amended by s. 24 of Act 36 of 1950 and by s. 16 (1) of Act 45 of 1953 and repealed by s. 5 of Act 92 of 1977.]

8quater

[S. 8quater inserted by s. 25 of Act 36 of 1950, amended by s. 17 of Act 45 of 1953 and by s. 16 (1) of Act 59 of 1956 and repealed by s. 5 of Act 92 of 1977.]

9 Regulations regarding currency banking or the exchanges

(1) The Governor-General may make regulations in regard to any matter directly or indirectly relating to or affecting or having any bearing upon currency, banking or exchanges.

(2) (a) Such regulations may provide that the Governor-General may apply any sanctions therein set forth which he thinks fit to impose, whether civil or criminal.

(b) Any regulation contemplated in paragraph (a) may provide for-

(i) the blocking, attachment and obtaining of interdicts for a period referred to in paragraph (g) by the Treasury and the forfeiture and disposal by the Treasury of any money or goods referred to or defined in the regulations or determined in terms of the regulations or any money or goods into which such money or goods have been transformed by any person, and-

(aa) which are suspected by the Treasury on reasonable grounds to be involved in an offence or suspected offence against any regulation referred to in this section, or in respect of which such offence has been committed or so suspected to have been committed;

(bb) which are in the possession of the offender, suspected offender or any other person or have been obtained by any such person or are due to any such person and which would not have been in such possession or so obtained or due if such offence or suspected offence had not been committed; or

(cc) by which the offender, suspected offender or any other person has been benefited or enriched as a result of such offence or suspected offence:

Provided that, in the case of any person other than the offender or suspected offender, no such money or goods shall be blocked, attached, interdicted, forfeited and disposed of if such money or goods were acquired by such person *bona fide* for reasonable consideration as a result of a transaction in the ordinary course of business and not in contravention of the regulations; and

[Sub-para. (i) amended by s. 1 (a) of Act 48 of 1988.]

(ii) in general, any matter which the State President deems necessary for the fulfilment of the objectives and purposes referred to in subparagraph (i), including the blocking, attachment, interdicting, forfeiture and disposal referred to in subparagraph (i) by the Treasury of any other money or goods belonging to the offender, suspected offender or any other person in order to recover an amount equal to the value of the money or goods recoverable in terms of the regulations referred to in subparagraph (i), but which can for any reason not be so recovered.

[Para. (b) added by s. 1 (1) of Act 23 of 1987.]

- (c) Any regulation contemplated in paragraph (a) may authorize any person who is vested with any power or who shall fulfil any duty in terms of the regulation, to delegate such power or to assign such duty, as the case may be, to any other person.

[Para. (c) added by s. 1 (1) of Act 23 of 1987.]

- (d) Any regulation contemplated in paragraph (a) shall provide-

- (i) that any person who feels aggrieved by any decision made or action taken by any person in the exercise of his powers under a regulation referred to in paragraph (b) which has the effect of blocking, attaching or interdicting any money or goods, may lodge an application in a competent court for the revision of such decision or action or for any other relief, and the court shall not set aside such decision or action or grant such other relief unless it is satisfied-
- (aa) that the person who made such decision or took such action did not act in accordance with the relevant provisions of the regulation; or
- (bb) that such person did not have reasonable grounds to make such decision or to take such action; or
- (cc) that such grounds for the making of such decision or the taking of such action no longer exist;
- (ii) that the Treasury shall cause a notice to be published in the *Gazette* of any decision to forfeit and dispose of any money or goods blocked, attached or interdicted in terms of the regulations referred to in paragraph (b), and that a notice of such decision shall be sent simultaneously with publication thereof in the *Gazette* by registered mail to any person who is, according to the Treasury, affected by such decision or, if no address of such person is available, that such notice shall be so sent to the last known address of such person; and
- (iii) that any person who feels aggrieved by any decision to forfeit and dispose of such money or goods may, within a period prescribed by the regulations, which shall not be less than 90 days after the date of the notice published in the *Gazette* and referred to in subparagraph (ii), institute legal proceedings in a competent court for the setting aside of such decision, and the court shall not set aside such decision unless it is satisfied-
- (aa) that the person who made such decision did not act in accordance with the relevant provisions of the regulation; or
- (bb) that such person did not have grounds to make such decision; or
- (cc) that the grounds for the making of such decision no longer exist.

[Para. (d) added by s. 1 (1) of Act 23 of 1987.]

- (e) Any regulation contemplated in paragraph (a) may be made with retrospective effect, and if so made, such regulations shall also apply to matters in respect of which legal proceedings have been instituted but have not been disposed of at the promulgation thereof.

[Para. (e) added by s. 1 (1) of Act 23 of 1987.]

- (f) For the purposes of this subsection "Treasury" means the Minister of Finance or an officer in the Department of Finance who, by virtue of the division of work in that Department, deals with that matter on the authority of the Minister.

[Para. (f) added by s. 1 (1) of Act 23 of 1987.]

- (g) The period referred to in paragraph (b) (i) shall be a period not exceeding 36 months or such longer period-

- (i) as ends 12 months after the final judgment (including on appeal, if any) in every prosecution for any contravention of the regulations or any other law in relation to the money or goods concerned or in which such money or goods are relevant to any aspect of such prosecution; or

- (ii) as may be determined by a competent court in relation to the money or goods concerned on good cause shown by the Treasury.

[Para. (g) added by s. 1 (b) of Act 48 of 1988.]

(3) The Governor-General may, by any such regulations, suspend in whole or in part this Act or any other Act of Parliament or any other law relating to or affecting or having any bearing upon currency, banking or exchanges, and any such Act or law which is in conflict or inconsistent with any such regulation shall be deemed to be suspended in so far as it is in conflict or inconsistent with any such regulation.

(4) The Minister of Finance shall cause a copy of every regulation made under this section to be laid upon the Table of both Houses of Parliament within fourteen days after the first publication thereof in the *Gazette*, if Parliament is in ordinary session during the whole of that period, and if Parliament is not in ordinary session during the whole of that period, then within fourteen days after the beginning of the next ordinary session of Parliament; and if any such regulation is calculated to raise any revenue, he shall cause to be attached to the copy so laid upon the Table a statement of the revenue which he estimates will be raised thereby during the period of twelve months after the coming into operation thereof. Every such regulation calculated to raise any revenue shall cease to have the force of law from a date one month after it has been laid on the Table unless before that date it has been approved by resolution of both Houses of Parliament.

[Sub-s. (4) added by s. 6 of Act 27 of 1940 and amended by s. 17 (1) of Act 43 of 1941.]

- (5) (a) Any regulations made under this section may provide for the empowering of such persons as may be specified therein to make orders and rules for any of the purposes for which the Governor-General is by this section authorized to make regulations.
- (b) The provisions of this sub-section shall be deemed to have come into operation on the twenty-third day of January, 1948.

[Sub-s. (5) added by s. 26 of Act 36 of 1950.]

(6) The provisions of this section shall apply also to the Territory of South-West Africa.

[Sub-s. (6) added by s. 26 of Act 36 of 1950 with effect from 23 June, 1950.]

10 Repeals the Financial Emergency Regulations Act 48 of 1931

11 Short title and commencement

This Act shall be known as the Currency and Exchanges Act, 1933 and, subject to the provisions of sub-section (5) of section *eight*, shall be deemed to have come into operation on the twenty-eighth day of December, 1932.