

REPUBLIC OF SOUTH AFRICA

LAND BANK AMENDMENT BILL

*(As amended by the Select Committee on Land, Agriculture and Environmental Affairs
(National Council of Provinces))*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 108D—97]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE LANDBANK

*(Soos gewysig deur die Gekose Komitee oor Landbou, Grond en Omgewingsake
(Nasionale Raad van Provinsies))*

(MINISTER VIR LANDBOU EN GRONDSAKE)

[W 108D—97]

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- “ ‘company’ means a company as defined in the Companies Act, 1973 (Act No. 61 of 1973), whether the expression occurs on its own or in conjunction with the expression ‘co-operative society’;”;
- (e) by the deletion of the definition of “co-operative company”;
- (f) by the substitution for the definition of “co-operative society” of the following definition: 5
 “ ‘co-operative society’ means a co-operative as defined in section 1 of the Co-operatives Act, 1981 (Act No. 91 of 1981);”;
- (g) by the insertion of the following definition after the definition of “co-operative society”: 10
 “ ‘department’ means the Department of Agriculture;”;
- (h) by the insertion of the following definition after the definition of “farmer”:
 “ ‘financial intermediary’ means any institution which, as part of its activities, obtains loans from the bank and, on the basis of such loans, advances monies or extends credit to the public or a sector of the public involved in agriculture or agriculture-related activities or for the acquisition of property for agricultural purposes.”; 15
- (i) by the insertion of the following definition after the definition of “futures contract”:
 “ ‘institution’ means any company, co-operative society, trust, communal property association or voluntary association, whether incorporated or not;” 20
- (j) by the deletion of the definition of “general manager”;
- (k) by the substitution for the definition of “managing director”, of the following definition:
 “ ‘managing director’ means the managing director appointed under section [four bis] 13;” 25
- (l) by the substitution for the definition of “Minister” of the following definition:
 “ ‘Minister’ means the Minister [of Finance, or any other Minister of State acting in his stead] for Agriculture and Land Affairs;”;
- (m) by the deletion of the definition of “staff”; and 30
- (n) by the substitution for the definition of “this Act” of the following definition:
 “ ‘this Act’ includes the regulations and notices [made] promulgated thereunder;”.

Amendment of section 4 of Act 13 of 1944, as amended by sections 2 and 3 of Act 42 of 1951, section 1 of Act 46 of 1965, section 7 of Act 31 of 1969, section 2 of Act 92 of 1970 and section 9 of Act 51 of 1991 and Proclamation 147 of 1979 35

2. Section 4 of the principal Act is amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) (a) The business of the bank shall be controlled by a board of directors appointed by the Minister and who shall— 40
 (i) direct and conduct the operations and business of the bank; and
 (ii) determine and implement policies to administer this Act.
 (b) The board shall consist of—
 (i) a chairperson;
 (ii) the managing director; 45
 (iii) not less than six or more than ten other members.”; and
- (b) by the deletion of subsections (3), (4) and (5).

Repeal of section 4bis of Act 13 of 1944

3. Section 4bis of the principal Act is repealed.

Substitution of section 5 of Act 13 of 1944, as amended by section 8 of Act 31 of 1969 and section 9 of Act 51 of 1991 and Proclamation 147 of 1979 50

4. The following section is substituted for section 5 of the principal Act:

“Appointment, vacancies and removal from office of members of board

5. (1) No person may be appointed as a member of the board if he or she is disqualified to act as a director of a company incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973). 5
- (2) (a) Members of the board have to disclose their personal, professional and business interests on appointment to the bank and notify it when these change.
- (b) The bank shall cause a written record of members’ interests to be kept. 10
- (3) A member of the board shall vacate his or her office if—
- (a) he or she becomes of unsound mind;
- (b) he or she has been absent from more than two consecutive meetings without leave of the chairperson for each absence;
- (c) he or she resigns and has notified the chairperson in writing of his or her resignation; or 15
- (d) he or she becomes subject to the criteria set out in subsection (1).
- (4) If the office of a member of the board becomes vacant before the expiry of the period for which he or she was appointed, the Minister shall appoint a person to fill the vacancy for the unexpired period of office of such member. 20
- (5) The Minister may, on the term of office of the board lapsing without a new board having been appointed, reappoint the existing board for a maximum period of three months at a time until a new board has been appointed.”. 25

Substitution of section 6 of Act 13 of 1944, as amended by sections 2 and 3 of Act 13 of 1953 and section 2 of Act 93 of 1986

5. The following section is substituted for section 6 of the principal Act:

“Meetings of board

6. (1) The members of the board shall, not less than once in every four months, meet at such times and places and in the manner as the chairperson may from time to time determine. 30
- (2) The chairperson may at any time convene an extraordinary meeting of the board to be held at a time and place and in the manner determined by him or her and shall, upon a written request of the managing director or two other members, convene an extraordinary meeting to be held within two weeks after the date of receipt of such request. 35
- (3) The board may publish the procedure to be followed at a meeting thereof by notice in the *Gazette*.
- (4) In the absence of a published procedure under subsection (3), the person presiding at a meeting of the board shall determine the procedure to be followed at such meeting. 40
- (5) (a) The quorum for a meeting of the board shall be half of the members plus one.
- (b) The decision of the majority of the members of the board present at a meeting thereof shall constitute a decision of the board. 45
- (c) In the event of any equality of votes on any matter the person presiding at a meeting of the board has a casting vote in addition to his or her deliberative vote.
- (6) No decision taken by the board or act performed under the authority of the board shall be invalid by reason only of a casual vacancy on the board or of the fact that any person not entitled to sit as a member of the board sat as such a member at the time the decision was taken or the act was authorised. 50
- (7) (a) If the board takes a decision in any other manner than at a formal meeting such decision shall come into effect immediately but must be reduced to writing and submitted for noting at the first formal meeting of the board following such decision. 55
- (b) The board shall cause a written record of its proceedings to be kept.”.

Substitution of section 7 of Act 13 of 1944, as substituted by section 2 of Act 13 of 1953 and section 2 of Act 93 of 1986

6. The following section is substituted for section 7 of the principal Act:

“Executive committees

7. (1) (a) The board may appoint committees consisting of as many members of the board, staff of the bank and advisers to the bank as may be deemed necessary to perform such functions or exercise such powers of the board as the board may perform or exercise under this Act, and may at any time dissolve or reconstitute such a committee. 5

(b) The chairperson of any such committee shall be a member of the board. 10

(c) The provisions of section 5(3) and (4), 6(1) and (3) up to and including (7) and 10 shall *mutatis mutandis* apply to any such committee.

(2) The board is not divested of any function or power conferred upon a committee under subsection (1). 15

(3) Any decision of a committee performing a function or exercising a power of the board shall be tabled at a board meeting and may be withdrawn or amended by the board or referred back to such committee and shall, until it has been so withdrawn or amended, be deemed to be a decision of the board.”. 20

Substitution of section 8 of Act 13 of 1944

7. The following section is substituted for section 8 of the principal Act:

“Advisory committees

8. The board may appoint committees consisting of as many members of the board, staff of the bank, advisers to the bank and other persons as may be deemed necessary to advise the board in general or on any particular matter.”. 25

Repeal of section 9 of Act 13 of 1944

8. Section 9 of the principal Act is repealed.

Substitution of section 10 of Act 13 of 1944, as amended by section 1 of Act 10 of 1952, section 3 of Act 47 of 1959, section 3 of Act 46 of 1965, section 1 of Act 5 of 1968, section 24 of Act 70 of 1968, section 46 of Act 97 of 1986 and section 9 of Act 51 of 1991 30

9. The following section is substituted for section 10 of the principal Act:

“Remuneration of members of board 35

10. A member of the board other than the managing director shall be paid for his or her services as member such remuneration and allowances out of the funds of the bank as determined by the Minister.”.

Amendment of section 11 of Act 13 of 1944, as amended by section 46 of Act 97 of 1986 40

10. Section 11 of the principal Act is amended—

(a) by the substitution for subsection (1) of the following subsection:

“[(1)] The [Minister] board may, upon such conditions as [he] it may determine, appoint in respect of the bank or any branch of the bank, [not more than three persons as] advisers to advise the bank in such matters as [the board may refer] may be referred to them.”; and 45

(b) by the deletion of subsection (2).

Amendment of section 12 of Act 13 of 1944, as amended by section 2 of Act 41 of 1972 and Act 89 of 1985

11. Section 12 of the principal Act is amended—

- (a) by the substitution for subsection (1) of the following subsection: 5
 “[~~(1)~~] No member of the board or official of the bank shall at any meeting ~~5~~
~~[thereof] of the board or of any committee thereof or at a meeting of officials~~
~~of the bank take part in the discussion of or vote upon, and no adviser shall~~
~~[advise the bank] give any advice in connection with—~~
 (a) any application for an advance under this Act by any person who is 10
 related to that member, official or adviser within the third degree of
 affinity or ~~[consanguinity] blood relationship~~ or, if ~~[such person] the~~
~~applicant is a company, any director or shareholder thereof, or, if [such~~
~~person] the applicant is a close corporation, any member thereof, who is~~
 related to that member, official or adviser within the third degree of 15
 affinity or ~~[consanguinity] blood relationship; [or]~~
 (b) any such application by any person or who is a debtor or creditor of that
 member, official or adviser or in partnership with or in the employ of that
 member, official or adviser; or
 (c) any such application by any person who is a debtor or creditor under a 20
 mortgage bond of any body of persons, whether incorporated or not, of
 which that member, official or adviser is a director or under which he or
 she holds any office or position other than that of auditor.”; and
 (b) by the deletion of subsection (2).

Substitution of section 13 of Act 13 of 1944, as amended by section 9 of Act 42 of 1951, section 4 of Act 13 of 1953, section 2 of Act 60 of 1957, section 4 of Act 46 of 1965 and section 9 of Act 51 of 1991 25

12. The following section is substituted for section 13 of the principal Act:

“Appointment of staff

- 13.** (1) The Minister shall appoint a suitable person as managing director 30
 of the bank.
 (2) The managing director shall—
 (a) be responsible for—
 (i) the management of the day-to-day affairs of the bank, subject to 35
 the directions of the board; and
 (ii) administrative control over the staff appointed under paragraph
 (b);
 (b) on such conditions as the board may determine, appoint general 40
 managers and other officials or contract with any person to supply such
 services as may be necessary to perform the work connected with the
 business of the bank;
 (c) be paid and pay staff such remuneration, allowances, subsidies and 45
 other service benefits in accordance with a remuneration structure as
 may be determined from time to time in consultation with the board.”.

Repeal of sections 14 and 14bis of Act 13 of 1944

13. Sections 14 and 14bis of the principal Act are repealed. 45

**Amendment of section 21 of Act 13 of 1944, as amended by sections 5 and 6 of Act 47 of 1959, section 1 of Act 35 of 1961, section 1 of Act 14 of 1964, section 5 of Act 46 of 1965, section 3 of Act 41 of 1972, section 1 of Act 52 of 1975, section 1 of Act 109 of 1976, section 2 of Act 20 of 1980, section 1 of Act 88 of 1981, section 3 of Act 89 of 1985, section 6 of Act 88 of 1988, section 1 of Act 93 of 1988, sections 7 and 8 50
 of Act 80 of 1989, section 17 of Act 108 of 1991 and section 1 of Act 24 of 1995**

14. Section 21 of the principal Act is amended—

- (a) by the insertion of the following subparagraph after subparagraph (iiA) of paragraph (a) of subsection (1):
“(iiB) on the provision of such collateral or on such other conditions as may from time to time be determined by the board; or”;
- (b) by the insertion of the following paragraph after paragraph (c)~~[ter]~~ of subsection (1):
“(c)bis to advance money to any joint venture, partnership or institution;”;
- (c) by the insertion of the following paragraph after paragraph (e)~~[quat]~~ ter of subsection (1):
“(e)quat to make investments, either on its own or in conjunction with other bodies or persons involved in agriculture or agriculture-related activities;”; and
- (d) by the addition of the following paragraph after paragraph (g) of subsection (1):
“(g)bis to enter into agreements with financial intermediaries;”.

Amendment of section 23 of Act 13 of 1944, as amended by section 4 of Act 41 of 1972, section 2 of Act 85 of 1981 and section 4 of Act 89 of 1985

15. Section 23 of the principal Act is amended by the substitution of subsection (1) of the following subsection:

- “(1) No advance shall be made to any person, except—
- (a) upon a written application which shall be in the form prescribed by the board and shall indicate the purpose for which the advance is required; and
- [(b) upon a resolution of a properly constituted meeting of the board and after due consideration of the application for such advance,]**
- [(b) [or] until the bond or other security which is proposed to be given in respect of the advance has been registered as required by law or otherwise completed, [and, where such other security consists of stock issued by the Republic Government, the cession thereof to the bank has been embodied in a deed which, together with the stock concerned, has been delivered to the bank] or until such conditions as the board may determine have been complied with.”.**

Amendment of section 25 of Act 13 of 1944, as amended by section 8 of Act 47 of 1959, section 11 of Act 31 of 1969, section 3 of Act 88 of 1981 and Proclamation 147 of 1979

16. Section 25 of the principal Act is amended—

- (a) by the deletion of subparagraph (ii) of paragraph (a); and
- (b) by the addition of the following subsection, the existing subsection becoming subsection (1):

“(2) The board may deviate from the provisions of subsection (1) by determining alternative security or other conditions on which advances under this Act are made.”.

Repeal of sections 26, 26A and 26B of Act 13 of 1944

17. Sections 26, 26A and 26B are repealed.

Amendment of section 34 of Act 13 of 1944, as amended by section 15 of Act 47 of 1959, section 8 of Act 46 of 1965, section 9 of Act 5 of 1968, section 3 of Act 52 of 1975, section 5 of Act 89 of 1985 and section 3 of Act 93 of 1986

18. Section 34 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

- “(1) (a) Notwithstanding the provisions of section 25 the **[board]** bank may, **[upon completion of a promissory note by a farmer]** on the conditions that the board may determine make an advance to a farmer to enable him or her to defray any costs which, in the opinion of the **[board]** bank, are connected with the production, cultivation, gathering, processing or marketing of any crops by him or her or pay any debts incurred by him or her to defray such costs **[or to]** including

costs or debt relating to the [or to] purchase of livestock or farming machinery or other implements or equipment and [to install] the instalment of such machinery or equipment and property.

(b) Notwithstanding the provisions of any other law, any advance made under paragraph (a) to a person deemed to be a minor as the result of the customary marriage or customs of such a person, shall for the purposes of this Act be deemed to be an advance made to a person who is emancipated by law.’. 5

Amendment of section 35 of Act 13 of 1944, as amended by section 17 of Act 47 of 1959

19. The following section is substituted for section 35 of the principal Act: 10

“Advances to co-operative societies and companies

35. (1) The bank may, on the conditions determined by the board, lend money to a co-operative society or a company.

(2) A loan in terms of subsection (1) shall only be made to a co-operative society or company involved in agriculture or agriculture-related activities or for the acquisition of property for agricultural purposes.”. 15

Amendment of section 38 of Act 13 of 1944, as amended by section 19 of Act 47 of 1959

20. The following section is substituted for section 38 of the principal Act:

“Security for advance to co-operative societies

38. (1) A [company] co-operative society to which any advance has been made under section *thirty-five*, may notwithstanding anything to the contrary contained in its memorandum, if any, and articles of association or regulations as security for that advance, cede to the bank all the [company’s] co-operative society’s right and title to— 25

(a) the amount of subscribed but unpaid capital and to the amount of any contingent liability attaching to its shares; and

(b) the amount of any debts owing or which may thereafter be owing to the [company] co-operative society.

(2) Such cession shall be in such form as the board may determine, shall be exempt from stamp duty, and shall— 30

(a) if the board so directs, be accompanied by a list, certified by two persons duly authorized thereto, showing as at the date of the cession—

(i) the names and addresses of all persons holding shares in the [company] co-operative society; 35

(ii) the number of shares registered in the name of each such person and the amount paid up in respect thereof;

(iii) the nominal value of such shares; and

(iv) the amount of any contingent liability attaching to the shares; and 40

(b) bind such of the agricultural produce of the member of the [company] co-operative society as was actually in the possession of, or in transit to the [company] co-operative society or its agents, and in respect of which the advance was made.

(3) Every list mentioned in paragraph (a) of subsection (2), shall, when certified as in that paragraph prescribed, be evidence in favour of the bank, that the persons mentioned therein are liable to pay the amount stated therein, and the board may enforce payment of that liability as if it were a liability mentioned in subsection (2) of section *sixty-three*. 45

(4) The bank may require lists similar to those mentioned in subsection 50

(2), to be furnished to it from time to time in respect of any further shares which may be issued by the **[company] co-operative society** concerned, and the cession referred to in subsection (1) shall be deemed to include the shares appearing in such lists.

(5) When a **[company] co-operative society** has, in terms of subsection(1), ceded its right to an amount mentioned in paragraph (a) of that subsection, the board may, by notice in writing addressed to the **[company] co-operative society** at the place which it has mentioned to the board or to the bank as its address, prohibit the **[company] co-operative society** from effecting or registering, without the board's consent in writing, the transfer of any share in the **[company] co-operative society** which is not paid-up in full or to which any contingent liability attaches, and thereafter while the **[company] co-operative society** owes the bank any money by virtue of the advance which was secured by the cession in question, the **[company] co-operative society** shall not effect or register the transfer of any such share as aforesaid without the board's consent in writing.

(6) While a **[company] co-operative society** owes the bank any money by virtue of an advance mentioned in subsection (1)—

- (a) all agricultural produce and all products manufactured by the **[company] co-operative society** from any agricultural produce; and
- (b) all articles or substances purchased by the **[company] co-operative society** with money so advanced to it,

which are in the possession of or in transit to the **[company] co-operative society** or an agent of the **[company] co-operative society**, shall be deemed to have been pledged to the bank as effectually as if they had been expressly pledged and delivered to the bank, and any disposal thereof by or on behalf of the **[company] co-operative society**, without the consent in writing of the board, shall be null and void.

(7) The board may require a **[company] co-operative society** to furnish such further security for any advance aforesaid as the board may deem necessary in order that the advance may be adequately secured.”.

Amendment of section 39 of Act 13 of 1944

21. The following section is substituted for section 39 of the principal Act:

“Sale of produce by a co-operative society indebted to the bank under a cash credit account

39. Notwithstanding anything contained in any law or in the regulations of a co-operative society **[or co-operative company]**, any produce delivered to that society **[or company]**, and any product manufactured therefrom by the society **[or company]** shall, while such society **[or company]** is indebted to the bank in respect of an advance in the form of a cash credit account, be realisable only by the society **[or company]** in the ordinary course of its business or by the bank in the exercise of the powers conferred on it by this Act, and such produce or product, or the proceeds thereof shall not, while such debt with interest and costs remains unpaid, be attached in execution by any person other than the bank, except with the written consent of the bank.”.

Amendment of section 40 of Act 13 of 1944, as amended by section 20 of Act 47 of 1959

22. The following section is substituted for section 40 of the principal Act:

“Liability of members of co-operative society for advance in form of a cash credit account

40. (1) If an advance in the form of a cash credit account has been made by the bank to any co-operative **[company] society**—

- (a) every member of that [company] co-operative society shall, in addition to any other amount for which he or she may have become liable to the bank in respect of such advance, be liable to the bank as surety for the repayment of the advance, with interest and costs, by the [company] co-operative society, in an amount equal to the amount which he or she has received from the [company] co-operative society out of the advance or which has been paid out of the advance for any goods supplied or in respect of any services rendered to him or her by the [company] co-operative society; 5
- (b) such [company] co-operative society shall, whenever required by the bank to do so, furnish to the bank a list, certified by two persons duly authorized thereto, showing the name and address of every member of the [company] co-operative society who is liable to the bank in terms of paragraph (a), the amount in which he or she is so liable, and any other particulars which the bank may require. 10
- (2) Every such list so certified shall be evidence in favour of the bank that each person mentioned therein is so liable in the amount stated therein. 15
- (3) If any list required by the bank under paragraph (b) of subsection (1) is not furnished to the bank within thirty days after the date upon which the [company] co-operative society concerned was required to furnish such list, the members of the [company] co-operative society shall be jointly and severally liable to the bank in respect of the advance made to the [company] co-operative society. 20
- (4) The board shall—
- (a) in respect of the liability of any member of a co-operative [company] society under the provisions of subsection (1) of this section, have the same powers of recovery and obligations incidental thereto as it has in terms of section *sixty-three* in respect of any contingent liability attaching to shares; and 25
- (b) in respect of the liability of any such member under the provisions of subsection (3) of this section, have the powers of recovery and obligations incidental thereto which it would have had under this Act. [had such company been a co-operative society.]” 30

Amendment of section 41 of Act 13 of 1944, as amended by section 21 of Act 47 of 1959 35

23. The following section is substituted for section 41 of the principal Act:

“Advances to co-operative societies to facilitate export of produce, and security for such advances

41. (1) A co-operative [company] society which exports agricultural produce [oversea], may, if authorized in the manner prescribed by its constitution, apply to the bank in a form prescribed by the board, for an advance from the bank in the form of a cash credit account, on such security as is hereinafter described, to enable the [company] co-operative society to meet the cost incidental to such export. 40

(2) Such cost shall include the moneys expended or to be expended on packing materials, railage, port charges, shipping freight and all other expenditure reasonably incurred or to be incurred in placing and selling the produce on a market [oversea] outside the Republic of South Africa. 45

(3) The application for the advance shall be signed by two persons duly authorized thereto, and when so signed shall bind the [company] co-operative society for the repayment of the advance and interest due to the bank and all charges incurred by the bank in recovering such advance and interest. 50

(4) The board may grant such application on such conditions as it may determine, the rate of interest being such as is lawfully charged for the time being by the board for advances on cash credit accounts.

(5) No such advance shall be made except in respect of produce which is to be or has been exported [oversea] outside the Republic of South Africa, and which is consigned to or the sale whereof is controlled by a co-operative organisation [oversea] outside the Republic of South Africa approved by the board. 5

(6) Every such advance and the interest thereon shall be repayable to the bank within one year from the date thereof, and no further advance shall be made under this section to any [company] co-operative society as long as any prior advance thereunder and the interest thereon remain unpaid. 10

(7) Any such advance may be made on the security only of produce of any of the members of the [company] co-operative society, if the board is satisfied that such produce is to be exported and, in accordance with the [company's] co-operative society's constitution, is being sold through the [company] co-operative society: Provided that the board may, before making any such advance, require the [company] co-operative society to furnish other and additional security which it may think necessary adequately to secure the advance. 15 20

(8) As from the date of the advance and until the amount thereof and the interest due thereon and the aforesaid charges for the recovery thereof have been repaid to the bank, the ownership of the produce in respect of which the advance is made shall, notwithstanding that there has been no delivery thereof to the bank, become divested from the owner thereof and be vested in the bank as if it had been actually delivered to it. 25

(9) The proceeds of the sale of such produce [oversea] outside the Republic of South Africa shall also be deemed, as from the date of sale, to be vested in the bank or its agent or representative [oversea] outside the Republic of South Africa, and it shall be a breach of the conditions of the advance for the [company] co-operative society to direct or permit any such proceeds to be paid over without the board's consent to any person other than the bank or such agent or representative. 30

(10) Nothing in this section contained shall be construed as rendering the bank liable, either to the said owner, the [company] co-operative society, the purchaser or any other person, in respect of any contract of sale of the produce or in respect of any obligation for which a person is liable by reason of ownership. 35

(11) If the [company] co-operative society fails to pay when due, any amount for which it has become liable under this section, or to observe any of the conditions of the advance thereunder, the board may, after giving seven days' notice by registered letter addressed to the [company] co-operative society at the address recorded in the bank's books, without recourse to a court of law, seize and sell either by public auction or private treaty, any of the produce aforesaid forming the security for the advance, or so much thereof as will suffice to pay the amount then owing to the bank by the [company] co-operative society, and shall apply the proceeds of the sale to the liquidation or reduction of the amount and any expenses incurred by the board in connection with the seizure and sale. 40 45

(12) If part of the security is a cession in favour of the bank of all the [company's] co-operative society's right and title to the amount of subscribed but unpaid capital and to the amount of any contingent liability attaching to shares and the amount of any debts owing or which may thereafter be owing to the company, the provisions of section *sixty-three* shall *mutatis mutandis* apply in respect of the realization thereof." 50 55

Amendment of section 42 of Act 13 of 1944, as amended by section 42 of Act 47 of 1959

24. The following section is substituted for section 42 of the principal Act:

“Guarantee of contracts of co-operative societies

42. (1) The board may guarantee the performance of any contract, 5
entered into or to be entered into—

- (a) by any co-operative society [**or company**], whether jointly with any
other society [**or company**], or otherwise; or
(b) by any person or co-operative society [**or company**] approved by the
board and acting on behalf of any one or more co-operative societies 10
[**or companies**],

and relating to the supply of produce or to payment for grain bags and
farming requisites generally or to the repayment of loans or to any other
business which the society [**or company**] concerned may lawfully perform:
Provided that any such guarantee in respect of a contract referred to in 15
paragraph (b) shall be limited to the extent to which a co-operative society
[**or company**] is interested in the performance of that contract.

(2) In the event of the failure of any such person or society [**or company**]
to carry out the term of any such contract in so far as the person or society
[**or company**] is liable to do so, or to conduct the business which is the 20
subject of that contract to the satisfaction of the board, the board may
complete the contract or abandon the same on such terms as it may be able
to arrange or (in the case of a contract referred to in paragraph (b) of
subsection (1)) as it may determine, and—

- (a) in the case of any such contract referred to in paragraph (a) of 25
subsection (1), recover from the society [**or company**] which is in
default, and its members, any loss sustained by the bank; or
(b) in the case of any such contract referred to in paragraph (b) of the
subsection, recover from every society [**or company**] on whose behalf 30
the relevant guarantee was given, and its members, its shares of any
such loss,

in the same manner as an advance in the form of a cash credit account made
by the bank to a co-operative society [**or company**], may be recovered from
the society [**or company**] and its members under the provisions of this Act, 35
and any such provisions relating to the recovery of any such advance shall
mutatis mutandis apply in respect of the recovery of any such loss.

(3) The co-operative society [**or company**] shall in respect of any
guarantee given under this section indemnify the bank to the extent of its
interests in the contract, and any such indemnity shall, subject to the 40
provisions of subsections (1) and (2), if signed by two persons duly
authorized thereto, bind the society [**or company**] and all the members
thereof.

(4) The society [**or company**] shall in respect of any guarantee given
under this section, pay to the bank a fee to be determined by the board, not 45
exceeding one-fifth of one per cent on the amount guaranteed, but no other
charge or fee shall be payable in respect of such guarantee and no stamp
duty shall be payable in respect of such guarantee or of any indemnity given
under subsection (3).”.

Insertion of section in Act 13 of 1944

25. The following section is inserted after section 45*bis* of the principal Act: 50

**“Advances to financial intermediaries, joint ventures, partnerships,
trusts and associations**

45ter. Notwithstanding the provisions of section 25, the bank may, on the
conditions that the board may determine, lend money—

- (a) to financial intermediaries in order to facilitate the advancement of money or the extension of credit by such intermediaries to the public or a sector of the public involved in agriculture or agriculture-related activities or for the acquisition of property for agricultural purposes;
- (b) to any joint venture, partnership or institution in order to enhance agriculture or any agriculture-related activity or for the acquisition of property for agricultural purposes.”

Substitution of section 63 of Act 13 of 1944, as amended by section 27 of Act 47 of 1959

26. The following section is substituted for section 63 of the principal Act: 10

“Remedies in respect of advances to co-operative societies

- 63.** (1) If a [**company**] co-operative society indebted to the bank—
- (a) is dissolved for any reason whatsoever; or
- (b) is removed from the register of co-operative [**companies**] societies kept by the registrar; or 15
- (c) fails to observe the conditions of any advance made by the board; or
- (d) fails to pay any amount upon due date; or
- (e) fails to make payment to the bank when required to do so in accordance with subsection (3) of section *thirty-six*; or
- (f) has ceased, in the opinion of the board, to carry on business; or 20
- (g) was established for a period and that period has expired, the board may, after giving seven days’ notice by registered letter, addressed to the [**company**] co-operative society at the address recorded in the bank’s books, and after due notice to the mortgagees, without recourse to a court of law, seize and sell, either by public auction or by private treaty, 25 any or all of the [**company’s**] co-operative society’s assets which have been specially mortgaged to the bank, and exercise, in such order as it shall determine, any one or all of the powers vested in it by virtue of the cession mentioned in subsection (1) of section *thirty-eight*.
- (2) If any person, whose liability to pay any subscribed but unpaid capital or any contingent liability attaching to shares, has accrued in terms of the [**company’s**] co-operative society’s memorandum, if any, and articles of association or regulations, fails, upon written demand being made by the board, to pay such amount within seven days after the date of demand, the board may, after notice to the mortgagees and without recourse to a court of 35 law, seize and sell through the sheriff so much of the immovable or movable property of such person as may appear to be necessary to make good the amount including the costs incurred by such seizure and sale.
- (3) The board in having recourse to the remedies provided by this section, shall, in every case sell as aforesaid movable property before 40 selling immovable property, and the provisions of paragraph (c) of subsection (2) of section *fifty-five* and the proviso to that subsection shall apply to any immovable property so sold: Provided that, if any property so sold is not specially hypothecated to the bank, but is specially hypothecated to some other person, or is subject in favour of some other person to a 45 hypothecation of a date prior to any hypothecation in favour of the bank, the board shall pay to such person the proceeds of such sale (after deducting any costs incurred by the bank in connection therewith) or so much thereof as may be owing to that person under the deed of hypothecation.

(4) The persons liable to pay any subscribed but unpaid capital or any contingent liability attaching to shares, shall be the persons whose names appear on the list of shareholders furnished by the **[company] co-operative society** at the time of signing the cession mentioned in subsection (1) of section *thirty-eight*, or from time to time thereafter, and they shall be liable to the extent stated in those lists: Provided that if any shares have, after the signing of such cession, been transferred with the board's written consent, the transferee, and not the person mentioned in any such list, shall be liable in respect of the shares so transferred. 5

(5) All amounts collected by the board and, subject to the provisions of subsection (3) of this section, the proceeds of the sale of immovable or movable property, shall be employed to reduce or liquidate the **[company's] co-operative society's** debt to the bank, and any surplus after liquidation of such debt shall be paid over to the **[company] co-operative society** or its legal representative. 10 15

(6) For the purposes of this section 'debt' includes, in addition to an advance and the interest thereon, the expenses incurred by the board in making the advance and in recovering it with interest as aforesaid."

Transitional provisions

27. (1) The board which is in office at the time of the promulgation of this Act shall be deemed to be the board appointed in terms of section 4 of the principal Act for the remainder of its members' original period of office. 20

(2) The person who is chairperson at the time of the promulgation of this Act shall be the managing director of the bank for the remainder of his or her term of office and the Minister shall designate a substituting chairperson in terms of section 4 of the principal Act. 25

Repeal and amendment of laws

28. (1) The laws mentioned in the Schedule are hereby repealed or amended to the extent set out in the third column thereof.

(2) Notwithstanding the provisions of subsection (1)— 30

(a) any application received under section 10 of the Agricultural Credit Act, 1966 (Act No. 28 of 1966), before the commencement of this Act, shall be dealt with as if the said section had not been repealed; and

(b) any process or action not yet finalised under Part III of the Agricultural Credit Act, 1966 (Act No. 28 of 1966), on the date of commencement of this Act, shall be dealt with as if the said Part had not been repealed. 35

Short title

29. This Act is called the Land Bank Amendment Act, 1998.

SCHEDULE

LAWS REPEALED OR AMENDED

No. and year of law	Short title	Extent of repeal or amendment
Act No. 28 of 1966	Agricultural Credit Act, 1966	<p>1. Section 1 is hereby amended by—</p> <p>(a) the insertion after the definition of “Director-General” of the following definition: “ ‘financial intermediary’ means a financial intermediary as defined in section 2 of the Land Bank Act, 1944 (Act No. 13 of 1944);”; and</p> <p>(b) the deletion of the definitions of “board”, “chairman of the board” and “magistrate”.</p> <p>2. The repeal of Part I, sections 10, 10A, 10B, 10C, 13, 20, Part III, sections 47(a), (b), (c) and (d), 48(1)(a) and 52.</p> <p>3. The amendment of section 20A—</p> <p>(a) by the substitution for paragraph (b) in subsection (1) of the following paragraph: “(b) any interest earned in terms of funds invested with the Public Investment Commissioners”;</p> <p>(b) by the deletion of paragraph (c); and</p> <p>(c) by the substitution for subsection (3) of the following subsection: “(3) The account shall be debited with—</p> <p>(a) the purchase price of immovable property purchased by the Minister in terms of section 37(3);</p> <p>(b) any amount as determined by the Minister from time to time, to be utilised by the Land Bank under the Land Bank Act, 1944 (Act No. 13 of 1944): Provided that the Land Bank—</p> <p>(i) shall primarily utilise such moneys for the benefit of the historically disadvantaged; and</p> <p>(ii) may, notwithstanding anything to the contrary in the said Act, make grants from such moneys or utilise such moneys for the purposes of capacity building, training and to facilitate the establishment and operation of financial intermediaries; and</p> <p>(c) any amount reimbursed by the direction of the Director-General because the account in his or her opinion has been erroneously credited therewith.”; and</p> <p>(d) by the substitution for subsection (5) of the following subsection: “(5) Moneys standing to the credit of the account which in the opinion of the Minister with the concurrence of the Minister of Finance are not required</p>

No. and year of law	Short title	Extent of repeal or amendment
		for immediate use as contemplated in subsection (3), shall be invested with the Public Investment Commissioners and may be withdrawn when required for the purposes mentioned in that subsection.”.
Act No. 45 of 1968	Agricultural Credit Amendment Act, 1968	Section 2.
Act No. 66 of 1970	Agricultural Credit Amendment Act, 1970	Sections 2(a), 2(b), 3, 4(a), 4(b), 5(a), 5(b), 10(a), 10(b), 11(a), 11(b), 15 and 19.
Act No. 10 of 1971	Agricultural Credit Amendment Act, 1971	Sections 2(1) and 4.
Act No. 15 of 1972	Agricultural Credit Amendment Act, 1972	Sections 1 and 2(1).
Act No. 62 of 1973	General Law Amendment Act, 1973	Section 32.
Act No. 67 of 1979	Agricultural Credit Amendment Act, 1979	Sections 1, 2(a) and 2(b).
Act No. 27 of 1980	Agricultural Credit Amendment Act, 1980	Sections 2(a), 2(b) and 3.
Act No. 73 of 1981	Agricultural Credit Amendment Act, 1981	Section 2.
Act No. 67 of 1982	Second Agricultural Credit Amendment Act, 1982	Sections 2, 3 and 4.
Act No. 42 of 1983	Agricultural Credit Amendment Act, 1983	Section 1(a).
Act No. 51 of 1987	Agricultural Credit Amendment Act (House of Assembly), 1987	Sections 1(1), 1(d), 1(e), 1(f), 2(a), 2(b), 3(a), 3(b), 4(a), 4(c), 5, 6, 7(a), 7(b), 8, 12(a), 12(b), 14, 15, 17, 19(a), 19(b), 19(c), 19(d), 20, 21, 22, 23, 24, 25, 35(b) and 36.
Act No. 53 of 1993	Agricultural Credit Amendment Act (House of Assembly), 1993	The whole.

MEMORANDUM ON THE OBJECTS OF THE LAND BANK AMENDMENT BILL

The main purpose of the Bill is to provide for the restructuring of a governance structure which is in line with other statutory organisations and will facilitate the smooth operation of the Land Bank.

In addition certain functional changes are made which will enable the Land Bank—

- (a) to extend loans to financial intermediaries for on-lending to small and upcoming farmers;
- (b) to extend loans directly to small and upcoming farmers; and
- (c) to extend loans not only to co-operative societies, but also to other institutions involved in agriculture or agriculture-related activities.

Certain sections of the Agricultural Credit Act, 1966 (Act No. 28 of 1966) are repealed. This will mean that no new financing shall be undertaken under the Agricultural Credit Act, 1966, and that the Land Bank will in future perform this role.

The following bodies were consulted:

Agricultural Credit Board
Land Bank

Parliamentary process

The Department of Agriculture and the State Law Advisers are of the opinion that the procedure established by section 76 of the Constitution should be followed in respect of this Bill.