

NOTICE 2941 OF 2000
NATIONAL DEPARTMENT OF AGRICULTURE

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The Minister of Agriculture has approved the draft Agricultural Debt Management Bill in principle. All interested persons are hereby invited to make **written** comments on the **draft** Bill on or before 22 September 2000 to one of the following addresses: The Director: Debt Management

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J. B. VENTER,

Director: Debt Management
National Department of Agriculture.

Draft Agricultural Debt Management Bill

To provide for the administration of the Act; to provide for the establishment of the Agricultural Debt Account; to provide for use of the account as a mechanism to manage agricultural debt repayment; to provide for the administration of monies in the account; to determine the purpose for which funds in the account may be used; to provide for auditing of and reporting on the account; to provide for various matters relating to debt agreements, interest rates, the collection and writing off of debt, the registration of bonds and property; and for matters connected therewith.

BE IT PROVIDED by the Parliament of the Republic of South Africa:—

Definitions

1. In this **Act**, unless the context otherwise **indicates**—

“account” means the **Agricultural Debt Account** referred to in section 3;

“agreement” means any oral or written agreement relating to debt, and shall include a unilateral undertaking by any person in favor of the State;

“Agricultural Credit Act” means the Agricultural Credit Act, 1966 (Act No. 28 of 1966);

“**Coloured Farmers Assistance Law**” means the **Coloured Farmers Assistance Law**, 1973 (Act No. 1 of 1973)(**Coloured Persons Representative Council**);

“debt” means any amount contractually or statutorily owed to the State as a result of assistance, loans or subsidies in terms of the provisions of the Agricultural Credit **Act**, the **Coloured Farmers Assistance Law** or financial assistance schemes, and includes any amount owed as rent or interest or resulting from or relating to such debt, and “debtor” has a corresponding meaning;

“department” means the Department of Agriculture of the national government;

“director-general” means the director-general of the department;

“financial assistance scheme” means subsidies, loans and other advances administered by the department;

“Minister” means the **Minister** responsible for the agriculture portfolio in the national **government**;

“official” means an **official** as defined in section 1(1) of the Public Service Act (Proclamation 103 of 1994);

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
and

“rent” means rent charged by the department for the use of land;

Administration of Act

2. (1) The director-general shall be responsible for the administration of this Act and shall be the accounting officer of the account.
- (2) The director-general shall designate an official of the department to administer this Act, and such **official** shall be assisted by as many officials or other persons as are deemed necessary to give effect thereto.
- (3) Subject to the provisions of subsection (4), the director-general may delegate any of his or her powers, **functions** or duties to an official designated under subsection (2), or to an official assisting that **official**.
- (4) Any power, duty or **function** capable of being exercised or performed under the provisions of section 5 of this Act may only be delegated to the chief financial officer of the department designated under the Public Finance Management Act.

Agricultural Debt Account

3. (1) The account established under section 20A of the Agricultural Credit Act shall notwithstanding the repeal of that Act, continue to exist and be known as the Agricultural Debt Account.
- (2) The monies standing to the credit of the account shall, on the date of commencement of this Act, consist of—
 - (a) all monies standing to the credit of the account on that date and received as repayment of debt under or as a result of the provisions of the Agricultural Credit Act;
 - (b) all monies received prior to that date as repayment of debt under or as a result of the provisions of the **Coloured** Farmers Assistance Law, 1973;
 - (c) such other monies standing to the credit of the account on that date and received by the department as repayment of debt under or as a result of financial assistance schemes or as rent.
- (3) The monies standing to the debit of the account **shall** consist of **all** obligations relating to debt referred to in subsection (2) on the date of commencement of this Act.

Crediting and debiting of account

4. (1) The account shall be credited with—
- (a) all monies received after the date of promulgation of this Act as repayment of debt referred to in section 3(2);
 - (b) all monies resulting from the collection of debt referred to in section 3(2) that is outstanding;
 - (c) interest earned from monies invested, and
 - (d) monies approved for utilisation but not used during a particular financial year as envisaged under section 5; and
 - (e) monies accruing from any other source.
- (2) The account shall be debited with—
- (a) the purchase price and any expenses or costs related to the purchase and management of property bought under this Act;
 - (b) any fees, expenses or costs incurred in terms of section 8(6);
 - (c) any amount reimbursed in the discretion of the director-general because—
 - (i) the account has been erroneously credited with that amount;
 - (ii) that amount is not owed to the State; or
 - (iii) that reimbursement will safeguard the interests of the State; and
 - (d) any amount utilised under section 5.
- (3) All monies received by the department as repayment or collection of debt other than that referred to in subsection (1) shall be deposited in the State Revenue Fund.
- (4) Monies standing to the credit of the account that are not in the opinion of the director-general immediately needed as contemplated under subsection (2), maybe invested—
- (a) with the Public Investment Commissioners; and
 - (b) with the approval of the Minister, given with the concurrence of the Minister of Finance, at any credible financial institution acknowledged as such by the Registrar of Financial Institutions.

Utilisation of monies

5. (1) The director-general may utilise surplus monies standing to the credit of the account for agricultural development and finance purposes: Provided that—
- (a) he or she is satisfied that such monies will not be needed as contemplated in section 4(2)(a), (b) or (c);
 - (b) the monies are utilised in accordance with a business plan submitted to and approved by the Minister.
- (2) A business plan referred to in subsection (1)(b) shall—

- (a) be submitted to the Minister at least three months prior to the advent of a financial year;
- (b) set out the proposed utilisation of surplus funds in that financial year; and
- (c) on receipt be considered by the Minister who may approve it with or without amendments,

Auditing and reporting

- 6. (1) The account shall have a financial year ending on 31 March of each year and be audited by the Auditor-General.
- (2) The director-general shall keep such accounting records as are necessary to accurately reflect the status of the account and submit such accounting records as may be required.

Validity of agreements

- 7. (1) Any agreement on commencement of this Act that directly or indirectly relates to debt shall, notwithstanding the repeal of any legislation under which or as a result of which that agreement was concluded, remain a legally binding agreement and be enforceable as such.
- (2) Any provision of repealed legislation referred to in subsection (1) shall, in as far as it directly or indirectly relates to or is connected with any agreement contemplated in that subsection, be deemed to be valid and may be invoked and enforced as if it had not been repealed.
- (3) Any mortgage bond, condition or restriction relating to debt and registered against immovable property on the date of commencement of this Act shall, notwithstanding the repeal of any legislation under which that mortgage or condition was effected, remain in place and be enforceable or executable as such.
- (4) Any provision of repealed legislation referred to in subsection (3) shall, in as far as it is necessary to give effect to or enforce any bond, condition or restriction registered against the title deed of that property, be deemed to be valid and may invoked or enforced as if it had not been repealed.
- (5) Any reference to a "Minister", the "Agricultural Credit Board", the "Coloured Persons Agricultural Assistance Board", "Secretary" or any other body or official in legislation or in an agreement referred to in subsection (1) or (2), or in legislation or a bond, condition or restriction referred to in subsection (3) or (4), shall be deemed to be a reference to the director-general, and he or she may exercise the powers or perform the functions or duties attributed to such person or body therein, regardless if such power originally had to be exercised or duty or function performed by such body or person on its own or in conjunction with any other body or person.

Debt

- 8. (1) The director general—
 - (a) shall on a continuous basis monitor the repayment of debt and investigate any factor that may influence the timeous repayment thereof;
 - (b) shall audit all securities related to debt;
 - (c) shall collect debt that is outstanding;
 - (d) may consider the writing off of debt; and

- (e) may exercise any power or take any other action relating to debt that may be required to safeguard the interests of the State.
- (2) Any immovable property bought by the director-general under subsection (1) shall as soon as practicable be registered in the name of the Republic of South Africa.
- (3) The director-general may, at the request of a debtor or any person having a legitimate interest therein, and on such conditions as he or she may determine—
- (a) consolidate amounts and interest owed as debt under different agreements;
 - (b) substitute debtors, vary or substitute bonds, impose or vary conditions or restrictions, or accept other or vary securities;
 - (c) vary or waive any right of the State, consent to any legal act and vary or waive any term of an existing agreement;
 - (d) determine any other condition subject to which an agreement contemplated in paragraphs (a), (b) and (c) is concluded or amended, including interest rates, the payment of collection costs or legal fees incurred in the collection of debt, and the incorporation of any bond, condition or restriction or other provision of an existing agreement into that agreement.
- (4) The director-general may write off debt relating to the account in accordance with the provisions of the Public Finance Management Act.
- (5 The)director-general may, on such conditions as he or she may determine—
- (a) contract with any person to collect debt that is outstanding and to take all such actions relating thereto as maybe necessary to ensure the collection thereof;
 - (b) appoint any person to represent him or her at auctions where assets of a debtor are sold and buy such assets on behalf of the State;
 - (c) from time to time enter into agreements with such other persons as may be necessary to safeguard the interests of the State in terms of this Act.
- (6) The fees of or the expenses or costs incurred by a person referred to in subsection (6) shall be borne by the account.

Tendering of documents for registration and exemptions

9. (1) Notwithstanding the provisions of any other Act, an official may tender a mortgage bond, agreement, consent, authorisation or other document at any deeds registry for registration or filing, and on receipt thereof the registrar shall, notwithstanding any requirements of the Deeds Registry Act, 1937 (Act No. 47 of 1937), cause the necessary endorsements to be made in his or her records,
- (2) No duties, taxes or other fees shall be payable under subsection (1).
- (3) The provisions of the Stamp Duties Act, 1968 (Act No. 77 of 1968) shall not apply to any agreement existing on or entered into after promulgation of this Act.

Repeal of laws

10. The laws set out in the Schedule are hereby repealed to the extent set out in third column thereof.

Short title and commencement

11. This Act shall be called the Agricultural Debt Management Act, 2000 and shall come into operation on a date determined by the President by Proclamation in the *Gazette*.

Schedule

No. and year of law	Short Title	Extent of repeal
Act 28 of 1966	Agricultural Credit Act	The whole
Act 45 of 1968	Agricultural Credit Amendment Act	The whole
Act 66 of 1970	Agricultural Credit Amendment Act	The whole
Act 100 f 1971	Agricultural Credit Amendment Act	The whole
Act 15 of 1972	Agricultural Credit Amendment Act	The whole
Act 81 of 1977	Agricultural Credit Amendment Act	The whole
Act 67 of 1979	Agricultural Credit Amendment Act	The whole
Act 87 of 1979	Designated Areas Development Act	The whole
Act 27 of 1980	Agricultural Credit Amendment Act	The whole
Act 73 of 1981	Agricultural Credit Amendment Act	The whole
Act 18 of 1982	Agricultural Credit Amendment Act	The whole
Act 67 of 1982	Snd. Agricultural Credit Amendment Act	The whole
Act 42 of 1983	Agricultural Credit Amendment Act	The whole
Act 51 of 1987	Agricultural Credit Amendment Act (HA)	The whole
Act 53 of 1993	Agricultural Credit Amendment Act (HA)	The whole
Act 65 of 1995	Agricultural Credit Amendment Act	The whole
Act 21 of 1998	Land Bank Amendment Act	Item 1,2 and 3 of the 3rd column of the Schedule

(25 August 2000)