

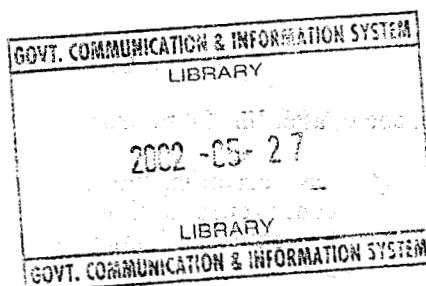
REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**LAND AND AGRICULTURAL
DEVELOPMENT BANK BILL**

[B 12—2002]

*(As agreed to by the Portfolio Committee on Agriculture and Land Affairs
(National Assembly))*



[B 12A—2002]

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AMENDMENTS AGREED TO

LAND AND AGRICULTURAL DEVELOPMENT BANK BILL [B 12—2002]

PREAMBLE

1. On page 2, after the fourth paragraph, to insert:

IN ORDER TO promote a competitive and profitable agricultural sector,

CLAUSE 1

1. On page 4, in line 18, to omit “designated by the President to administer this Act” and to substitute “responsible for agriculture”.
2. On page 4, from line 21, to omit the definition of “valuator” and to substitute:

“valuer” means a valuer appointed under section 47(2), and includes a Board member, an adviser or employee of the Bank authorised in writing to value any property offered as security for an advance under this Act.

CLAUSE 3

1. On page 5, after line 4, to insert:

(j) commercial agriculture; and
(k) food security.

CLAUSE 5

1. On page 5, after line 26, to insert:

(d) develop a code of good practice.

CLAUSE 10

1. On page 6, after line 34, to insert:

(f) has, according to a determination by an equality court, contravened section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000).

CLAUSE 15

1. On page 7, in line 47, to omit “majority of”.
2. On page 7, in line 47, after “members” to insert “who”.

CLAUSE 17

1. On page 8, in line 7, after “must”, to insert, “, after consultation with the Board,”.
2. On page 8, in line 11, after “Finance” to insert “and after the Minister had consulted with the Board.”
3. On page 8, in line 12, after “may”, to insert “, after consultation with the Board,”.

CLAUSE 21

1. On page 8, in line 41, after “Minister” to insert “and the Board”.
2. On page 8, in line 43, after “Minister” to insert “and the Board”.

CLAUSE 22

1. On page 9, after line 37, to insert:
(g) moneys received on deposit.
2. On page 9, in line 39, to omit “functions” and to substitute “mandate”.

CLAUSE 23

1. On page 9, in line 49, to omit subsection (2).

CLAUSE 26

1. On page 10, in line 13, after “business” to insert “and security arrangements”.
2. On page 10, in line 23, to omit “field” and to substitute “sphere”.
3. On page 10, in line 24, to omit “finance within its field of operation” and to substitute:
financial services within its sphere of operation
4. On page 10, in line 25, to omit paragraph (f) and to substitute:
(f) developing and putting into operation an effective agricultural risk management system;
5. On page 10, in line 30, after “immovable” to insert “and movable”.
6. On page 10, after line 38, to add:
(4) When the Bank provides insurance cover, the Long Term Insurance Act, 1998 (Act No. 52 of 1998), and the Short Term Insurance Act, 1998 (Act No. 53 of 1998), do not apply to the Bank.

CLAUSE 27

1. On page 10, in line 49, to omit all the words after “and” up to and including “of” and to substitute “thereafter those conditions must be included in”.

2. On page 10, from line 51, to omit subsection (2).
3. On page 10, in line 54, to omit "applies only to" and to substitute "must only be included in".

NEW CLAUSES

1. That the following be new Clauses:

Substitution of debtors

29. (1) Despite anything to the contrary in this Act, any person who acquires the whole of any land hypothecated to the Bank under a registered mortgage bond may, with the consent of the Bank granted on an application in the form prescribed by the Bank, take over all the obligations of the debtor under that mortgage bond and be substituted as debtor in respect of that bond.

(2) A substitution in terms of subsection (1) does not constitute a novation.

(3) When a person is substituted in terms of subsection (1), the advance secured by the mortgage bond is for the purposes of this Act deemed to have been made to that person by the Bank.

Statutory pledges

30. (1) While any person owes the Bank any money by virtue of an advance in terms of this Act—

- (a) all agricultural produce and all products manufactured by that person from any agricultural produce with money so advanced to him or her; and
- (b) any agricultural produce purchased by that person with money so advanced to him or her,

which is in the possession of or in transit to that person or an agent of that person, is deemed to have been pledged to the Bank as effectually as if it had been expressly pledged and delivered to the Bank, and any disposal thereof by or on behalf of that person, without the consent in writing of the Bank, is void.

(2) While any person owes the Bank any money by virtue of an advance in terms of this Act, in respect of agricultural produce held by that person in terms of a silo certificate, the products held by virtue of the silo certificate are deemed to have been pledged to the Bank as effectually as if the products have been delivered to the Bank despite the fact that the silo certificate or any other required registration is not registered in the name of the Bank.

Charge loans

31. (1) The Bank may advance money for the erection of—

- (a) water supply infrastructure;
- (b) bore holes;
- (c) main line and irrigation equipment;
- (d) all pumping requirements for irrigation;
- (e) dams;
- (f) internal or external fencing;
- (g) electricity supply by any supplier;
- (h) silos; and
- (i) roads to access farming areas.

(2) Before any payment is made in respect of the advance referred to in subsection (1), the Bank must transmit in writing to the Registrar of Deeds concerned information stating—

- (a) the date and amount of the advance made in terms of this section and, if the advance is made in respect of more than one property, the amount which each owner is liable to pay;
- (b) the person to whom the advance has been made; and
- (c) the property description in respect of which the advance is made,

and on receipt of that information the Registrar of Deeds must cause a note thereof to be made in his or her registers in respect of the property and must transmit forthwith to the Bank a certified copy of that note.

(3) The making of a note in terms of subsection (2) has the effect of creating in favour of the Bank a charge upon the property until the amount of the advance together with interest and costs has been repaid.

(4) On receipt of written information from the Bank that the amount of the advance together with interest and costs has been repaid, the Registrar of Deeds must delete from his or her registers the note referred to in subsection (2).

(5) If—

- (a) an instalment or interest in respect of an advance is still unpaid three months from the date on which payment thereof became due; or
- (b) the advance has not been applied for the purpose for which it was made,

the Bank may at any time require the debtor to repay the whole advance forthwith together with interest and costs or such portion thereof as he or she is liable to repay, and any interest due.

(6) No transfer of any property, or any partition deed of transfer in respect thereof, may be registered by any Registrar of Deeds except on production to the Registrar of a certificate signed by a duly authorised official of the Bank indicating—

- (a) that all instalments and interest up to then due to the Bank in respect of the advance have been paid; and
- (b) the amount still owing in respect of the advance and, if the property is being partitioned or any portion thereof is being transferred, the amount of the advance still owing which attaches to each separate portion of the property.

(7) The certificate referred to in subsection (6) is *prima facie* proof of the facts stated therein and the Registrar of Deeds must note the amount of any liability which attaches to the property in terms of that certificate on the document of title or deed of transfer of that property or of the relevant portion thereof.

Members of society to remain liable

32. (1) Despite anything to the contrary in any law, every member of a co-operative society, as defined in section 1 of the Co-operatives Act, 1981 (Act No. 91 of 1981), remains liable after his or her withdrawal from the society for every debt or obligation to the Bank which was—

- (a) incurred by the society while he or she was a member thereof; and
 - (b) undischarged at the date of that withdrawal,
- until the Bank has given a certificate to the effect that it is satisfied that the society and its remaining members are capable of discharging the debt or obligation.

(2) The Bank may not delay or refuse the issue of a certificate contemplated in subsection (1) unreasonably.

CLAUSE 29

1. On page 11, from line 32, to omit paragraph (e) and to substitute:

- (e) (i) the debtor becomes insolvent, commits any act of insolvency in terms of section 8 of the Insolvency Act, 1936 (Act No. 24 of 1936), or is sequestrated by virtue of an order of court in terms of that Act;
- (ii) the debtor is sentenced to imprisonment without the option of a fine;
- (iii) judgment is obtained against the debtor for the payment of any sum of money;
- (iv) any asset of the debtor is by order of a competent court declared executable or is attached in pursuance of an order of any such court;

2. On page 11, from line 48, to omit paragraph (b) and to substitute:

- (b) after the expiry of seven days after the Bank has in writing—
 - (i) made a demand for the repayment of the advance, addressed to the address of the debtor stated in the form of application for the advance; and
 - (ii) given notice to the holder of a preferrent or similar security in respect of the property of the debtor and, if appropriate, to the Registrar of Deeds,
 apply to a court of law for an order contemplated in subsection (4).

3. On page 11, from line 51, to omit subsection (4) and to substitute:

- (4) (a) If the Bank makes an application in terms of subsection (3)(b), and if there is evidence supported by affidavit that—
 - (i) a liquidated amount in money is due and payable to the Bank;
 - (ii) the Bank intends without undue delay to institute an action in that court against the debtor for recovery of the debt;
 - (iii) the debtor has no bona fide defence to the intended action;
 - (iv) if such action were instituted, the court would have jurisdiction in respect of the debtor and the cause of action;
 - (v) the debtor has property at his or her disposal from which the debt or part thereof could be satisfied if the property were available for execution after judgment;
 - (vi) a substantial danger exists that if an action for the recovery of the debt is instituted against the debtor, he or she will dispose of such property or will remove it from the area of jurisdiction of the court in order to evade satisfaction of the debt, or that the delay likely to be caused by the institution of an action for recovery of the debt would result in the property having no value due to its perishable nature;
 - (vii) arrangements including the giving of security have been or will be made by the Bank in order to protect the interests of the debtor or any other person whose interests might be affected by the granting of the order mentioned herein,
 a court of law may authorise the Bank to attach and sell by public auction or public tender, so much of the property and rights of the debtor as may be necessary to liquidate the amount owing in respect of the advance made by the Bank, together with interest and costs in respect thereof.

(b) In making such an order the court may impose conditions with regard to the institution of the action and the giving of security by the

Bank for any damages which the debtor or any persons might suffer or costs which might be incurred as a consequence of the attachment of any of his or her property.

(c) If it is reasonable or just in the circumstances or if compelling considerations exist and the Bank has provided necessary guarantees or other safeguards, the court may authorise the Bank to attach and sell the debtor's property and rights without recourse to ordinary court processes.

(d) Any person affected by an order referred to in paragraphs (a) to (c) may apply to a competent court to have the order set aside.

4. On page 12, in lines 1 and 2, to omit "subject to any hypothecation, lien or charge in favour of some other person" and to substitute "without encumbrances".
5. On page 12, in line 7, to omit all the words after "must" up to and including "must" in line 9.
6. On page 12, after line 14, to add:

(9) If an attachment in execution of a court order is made by an ordinary creditor against the debtor's property—

- (a) the Bank's statutory preferential right to the proceeds of the realisation of the debtor's property at the sale takes precedence over the rights of the ordinary creditor despite his or her having a writ or similar instrument; and
- (b) the proceeds received must after payment of the costs incurred in connection with the attachment and sale, be paid in their entirety to the Bank, unless they exceed the amount owing to the Bank in respect of the advance and the amount of the interest and costs in respect thereof.

(10) The sequestration or liquidation of the debtor's estate does not limit the Bank's right to apply to court for an order in terms of subsection (4) or its rights to deal with the debtor's property in terms of this section and section 34, despite any law which provides that the property of the debtor vests in his or her trustee or liquidator in the event of his or her sequestration or liquidation.

(11) A sheriff, the trustee of an insolvent estate, the assignee of an assigned estate, the executor of the estate of a deceased person or a liquidator or judicial manager of an insolvent company, close corporation or co-operative may not sell property mortgaged to the Bank to secure advances by the Bank, unless the Bank agrees in writing to that sale or has failed to sell that mortgaged property within three months after receipt of a written notice from that person requesting the Bank to sell that property.

(12) If the Bank has attached land or other security in terms of subsection (4) and that attachment has been noted by the Registrar of Deeds, that land or other security may not in any manner be hypothecated or charged, despite any other law to the contrary, except with the written consent of the Bank.

(13) A mortgage bond, whether special or general, registered to secure the payment of a debt not previously secured which was incurred prior to the Bank making an advance to the debtor concerned, does not confer any preference if the estate of the mortgage debtor is sequestrated or liquidated, or the Bank proceeds in terms of subsection (3), within a period of 12 months after the registration of that mortgage bond.

(14) A mortgage bond, whether special or general, registered to secure the payment of a debt which is incurred after the Bank has made an advance to the debtor concerned, does not confer any preference if the estate of the mortgage debtor is sequestrated or liquidated, or the Bank proceeds in terms of subsection (3), within a period of 12 months after the Bank made that advance.

CLAUSE 30

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Application of balance of proceeds of sale

34. (1) If the Bank has realised property or rights in accordance with section 33, the surplus of the proceeds of the realisation, if any, must, after payment of all costs incurred by the Bank in connection with the attachment and sale, be applied—

- (a) towards reducing or liquidating any amount owing in terms of any bond or other real right which ranks prior to the Bank's bond or real right; and
- (b) if any surplus remains, towards reducing or liquidating the amount owing to the Bank in respect of the advance, together with interest and costs in respect thereof; and
- (c) if any balance remains, as envisaged in subsection (3).

(2) Any other creditor who holds a statutory preferential right over property of the debtor in terms of any other law ranks after the Bank's preferential rights in terms of this Act.

(3) Any surplus not paid in terms of subsection (1) must be paid to the debtor, but if there is any other person who in law is entitled to payment, the amount that he or she is entitled to must be paid to him or her, and the remainder of that surplus, if any, must then be paid to the debtor.

CLAUSE 37

Clause rejected.

CLAUSE 44

1. On page 14, in line 35, to omit "valuator" and to substitute "valuer".
2. On page 14, in line 41, to omit "valuator" and to substitute "valuer".
3. On page 15, in line 5, to omit "valuator" and to substitute "valuer".

CLAUSE 47

1. On page 15, from line 31, to omit subsection (2) and to substitute:

(2) For purposes of undertaking any valuation contemplated in subsection (1), the Bank may from time to time—

- (a) despite any other law, appoint suitable persons as valuers; or
- (b) instruct a professional valuer or a professional associated valuer registered in terms of section 20(2)(a) of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000), to inspect and value property or value a deceased estate for purposes of this Act.

CLAUSE 48

1. On page 15, in line 41, to omit "valuator" and to substitute "valuer".

CLAUSE 49

1. On page 16, from line 12, to omit “Unless a person contemplated in subsection (2) agrees thereto in writing and every applicable provision of labour legislation has been complied with” and to substitute:

Unless every applicable provision of labour legislation had been complied with and unless a person contemplated in subsection (2) agrees thereto in writing

2. On page 16, in line 33, after “enacted” to insert:

and the Bank retains any rights it had in respect thereof immediately before the commencement of this Act