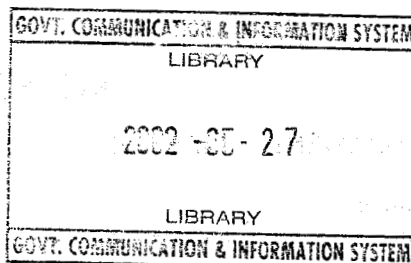


REPUBLIC OF SOUTH AFRICA

# LAND AND AGRICULTURAL DEVELOPMENT BANK BILL

*(As amended by the Portfolio Committee on Agriculture and Land Affairs  
(National Assembly)) (The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)



[B 12B—2002]

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# BILL

To provide for a juristic person known as the Land and Agricultural Development Bank; to provide for the mandate of the Bank; to provide for governance of the Bank; to regulate the management and control of the Bank; to provide for the funding of the Bank; to provide for the business of the Bank; to provide for risk management of the Bank; and to provide for related matters.

## PREAMBLE

**RECOGNISING THAT** racially discriminatory practices and laws of the past and apartheid deprived historically disadvantaged people of land resulting in their exclusion from the agricultural sector and racially skewed patterns of ownership of land in South Africa;

**IN ORDER TO** effect a change in the patterns of land ownership by promoting greater participation in the agricultural sector by historically disadvantaged persons and an increase in ownership of agricultural land by such persons through the provision of appropriate financial services;

**IN ORDER TO** promote sustainable agrarian reform and development of agricultural resources;

**IN ORDER TO** strengthen existing agricultural financial services; and

**IN ORDER TO** promote a competitive and profitable agricultural sector,

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## PART I

## FUNDAMENTAL PRINCIPLES AND INTERPRETATION

## Definitions

1. In this Act, unless the context indicates otherwise—
- “Bank” means the Land and Agricultural Development Bank of South Africa trading as the Land Bank; 5
  - “Board” means the board of directors of the Bank as constituted in terms of section 8; 10
  - “chairperson” means the chairperson of the Board designated in terms of section 8(1);
  - “Chief Executive Officer” means the person appointed in terms of section 17(1);
  - “Department” means the Department in the national sphere of government administering this Act;
  - “financial service” means a financial service normally rendered by a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), save for accepting deposits other than as provided for in this Act; 15
  - “government” means the government of the Republic of South Africa;
  - “Minister” means the Minister responsible for agriculture;
  - “prescribed” means prescribed by regulation;
  - “this Act” includes the regulations; 20
  - “valuer” means a valuer appointed under section 50(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.

## Continued existence and legal personality of Bank

2. (1) The Bank established under section 3 of the Land Bank Act, 1912 (Act No. 18 of 1912), and which continued to exist in terms of section 3 of the Land Bank Act, 1944 (Act No. 13 of 1944), continues to exist under the name of the Land and Agricultural Development Bank of South Africa despite the repeal of those Acts. 25
- (2) The Bank is a legal person and is, in its corporate capacity, capable of suing and being sued and is, subject to the provisions of this Act, capable of purchasing or otherwise acquiring, holding or alienating property, movable or immovable, and of performing such acts as legal persons may generally by law perform. 30
- (3) The Bank must be administered and managed as provided for in this Act.
- (4) The Bank is exempt from the provisions of any other law specially governing banks or other financial institutions unless such other law expressly provides for its application to the Bank. 35
- (5) The Minister, the Board and employees of the Bank must, where it is so provided and unless exempted by the Minister of Finance, comply with the applicable provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), in the management and conduct of the business and operations of the Bank. 40
- (6) The State is the sole shareholder of the Bank.

## Objects of Bank

3. (1) The objects of the Bank are the promotion, facilitation and support of—
- (a) equitable ownership of agricultural land, in particular the increase of ownership of agricultural land by historically disadvantaged persons; 45
  - (b) agrarian reform, land redistribution or development programmes aimed at historically disadvantaged persons or groups of such persons for the development of farming enterprises and agricultural purposes;
  - (c) land access for agricultural purposes;
  - (d) agricultural entrepreneurship; 50
  - (e) the removal of the legacy of past racial and gender discrimination in the agricultural sector;
  - (f) the enhancement of productivity, profitability, investment and innovation in the agricultural and rural financial systems;
  - (g) programmes designed to stimulate the growth of the agricultural sector and the better use of land; 55

- (h) programmes designed to promote and develop the environmental sustainability of land and related natural resources;
  - (i) programmes that contribute to agricultural aspects of rural development and job creation;
  - (j) commercial agriculture; and 5
  - (k) food security.
- (2) The Bank must achieve its objects by—
- (a) providing financial services to promote and facilitate access to ownership of land for the development of farming enterprises and for agricultural purposes by historically disadvantaged persons; 10
  - (b) providing financial services in support of any of its objects;
  - (c) facilitating and mobilising private sector finance to the agricultural sector; and
  - (d) providing such assistance as is necessary for carrying out the objects of the Bank.

## PART II

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### MANAGEMENT OF BANK

#### Control of Bank by Board

4. (1) The Minister must appoint a board of directors to manage the business of the Bank.
- (2) Whenever it is necessary to appoint a member of the Board the Minister must, by notice in the *Gazette* as well as in other appropriate media and by written invitation to the relevant parliamentary committees, call for the nomination of persons who are not disqualified in terms of section 10 to serve on the Board. 20

#### Functions of Board

5. (1) The Board must— 25
- (a) direct and control the operations and business of the Bank;
  - (b) implement the policies laid down in this Act;
  - (c) develop strategies for the efficient management of the Bank; and
  - (d) develop a code of good practice.
- (2) In carrying out its functions, the Board must exercise utmost care and act in the best interests of and for the benefit of the Bank. 30
- (3) The Board has all the powers necessary to carry out its functions in terms of this Act.

#### Board accountability

6. Board members are individually and collectively accountable to the Minister. 35

#### Role of Minister

7. The Minister—
- (a) is responsible for the development of policy with regard to agriculture, agrarian reform and matters incidental thereto; and
  - (b) may from time to time issue policy directives to the Board not inconsistent with this Act. 40

#### Composition of Board

8. (1) The Board consists of no fewer than seven and no more than 12 persons, including those contemplated in subsections (3) and (4).
- (2) The majority of the members of the Board must serve in a non-executive capacity. 45
- (3) The Chief Executive Officer is a member of the Board by virtue of his or her office and serves as an executive director.
- (4) The Minister may appoint any other employee of the Bank to serve as an executive director for as long as he or she remains an employee of the Bank.

(5) The Minister must designate one of the Board members as chairperson of the Board and another as deputy chairperson to act as chairperson when the chairperson is unable to do so.

(6) Board members viewed collectively must—

- (a) represent a broad cross-section of the population of the Republic; 5
- (b) be suited to serve on the Board by virtue of suitable qualifications, expertise and experience; and
- (c) be committed to the objectives of this Act.

#### **Appointment and term of office of Board member**

9. (1) The Minister may appoint a Board member for such period as the Minister may determine in the case of each member but such period may not exceed five years. 10

(2) Any Board member may after the expiry of his or her term of office be reappointed as a Board member unless he or she—

- (a) was removed from his or her office by the Minister in terms of section 12; or
- (b) has become disqualified in terms of section 10 to serve as a member of the Board. 15

(3) Despite subsection (1), the Minister may, before the term of office of any Board member has expired, extend the term of office of a Board member until a new Board has been appointed, but the period of that extension may not exceed six months.

#### **Disqualification**

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10. A person may not be appointed as a Board member if that person—

- (a) is not a citizen of, or does not hold a permanent residence permit for residence in, the Republic;
- (b) is subject to an order of a competent court declaring that person to be mentally ill; 25
- (c) is convicted after commencement of this Act, whether in the Republic or elsewhere, of any offence for which such person is sentenced to imprisonment without the option of a fine;
- (d) has been convicted—
  - (i) in the Republic of theft, perjury or an offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992); 30
  - (ii) elsewhere, of any offence corresponding materially with any offence referred to in subparagraph (i);
  - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or 35
  - (iv) of an offence in terms of this Act;
- (e) is disqualified to act as a director of a company incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (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). 40

#### **Vacating of office by Board member**

11. (1) A Board member may resign from the Board by giving one month's written notice to the Minister.

(2) The chairperson may resign as chairperson of the Board, remaining as a Board member, on one month's written notice to the Minister 45

(3) A Board member must vacate his or her office if he or she has been absent from more than two consecutive meetings of the Board without leave of the chairperson for each such absence.

(4) If the office of a non-executive Board member becomes vacant before the expiry of the period for which he or she was appointed, the Minister must appoint another person to fill the vacancy for the unexpired period of office of that member. 50

#### **Removal from office of Board member**

12. The Minister may remove a Board member from office prior to the expiry of that Board member's term of office— 55

- (a) if there is good reason for doing so; or
- (b) in terms of section 21(5).

### Meetings of Board

13. (1) The Board members must, not less than once every three months, meet at such time and place and in such manner as the chairperson may from time to time determine. 5
- (2) The chairperson—
- (a) may at any time convene an extraordinary meeting of the Board to be held at the time and place and in the manner determined by the chairperson;
  - (b) must, upon receipt of a written request of two other members, convene an extraordinary meeting of the Board to be held within 14 days after the date of receipt of that request, at the time and place and in the manner determined by the chairperson; and 10
  - (c) in the event of an extraordinary meeting being convened in terms of paragraph (a) or (b), must, by way of the most expeditious medium, give notice to all Board members of that meeting and the matter to be discussed at that meeting. 15
- (3) The person presiding at a meeting of the Board must determine a fair and reasonable procedure to be followed at that meeting.
- (4) At a meeting of the Board—
- (a) the quorum is half the number of the Board members appointed at that time plus one; 20
  - (b) a decision approved by the majority of the Board members present at a duly constituted meeting is a decision of the Board;
  - (c) in the event of an equality of votes being cast by the Board members present at a meeting, the person presiding at that meeting has a deciding vote in addition to his or her deliberative vote. 25

### Conditions of service of Board member

14. (1) The Minister must in consultation with the Minister of Finance determine the remuneration, allowances and other benefits of the chairperson and other Board members and that remuneration and those allowances must be paid out of the funds of the Bank. 30
- (2) The Minister may prescribe any other reasonable conditions of appointment to the Board in order to achieve the objectives of this Act.
- (3) The Minister may for purposes of subsection (1) make different determinations in respect of different positions on the Board.

### Committees of Board

15. (1) The Board may subject to subsection (2)—
- (a) appoint committees consisting of as many Board members, Bank employees and advisers to the Bank as may be necessary to perform such functions as the Board may direct; and
  - (b) at any time dissolve or reconstitute a committee appointed in terms of paragraph (a). 40
- (2) The chairperson of a committee must be a member of the Board.
- (3) A recommendation of a committee—
- (a) must be tabled at the following meeting of the Board;
  - (b) may be referred back to that committee; 45
  - (c) is a decision of the Board only if the Board has approved that recommendation.
- (4) The Board is not divested of any function conferred upon or delegated to a committee in terms of this section.
- (5) The Board must appoint an audit committee, of which— 50
- (a) the chairperson is a Board member; and
  - (b) the members who are not in the employ of the Bank.
- (6) The Board must ensure that every committee is provided with written authority from the Board setting out the parameters and context within which a function is to be performed by that committee. 55
- (7) The Board is accountable for any function performed by a committee in terms of this section.

### Delegation by Board

16. (1) The Board may from time to time by resolution delegate any of its powers and assign any of its duties to the Chief Executive Officer or any other Bank employee.

(2) A delegation or assignment by the Board under subsection (1) must be in writing and specify the period for which such function is delegated or assigned, the purposes of the delegation or assignment and any conditions and restrictions that the Board may impose. 5

(3) A delegation or assignment under subsection (1) does not prevent the performance by the Board of a delegated or assigned function.

(4) The Board may withdraw or amend a delegation or assignment made by it. 10

### Appointment of Chief Executive Officer

17. (1) The Minister must, after consultation with the Board, appoint a suitable person as Chief Executive Officer of the Bank.

(2) The Bank must pay the Chief Executive Officer the remuneration, allowances, subsidies and other service benefits determined from time to time by the Minister in consultation with the Minister of Finance and after the Minister had consulted with the Board. 15

(3) The Minister may, after consultation with the Board, terminate the employment of the Chief Executive Officer in accordance with applicable employment law.

### Powers and duties of Chief Executive Officer

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18. (1) The Chief Executive Officer is responsible for—

(a) the management of the day-to-day affairs of the Bank, subject to the directions of the Board; and

(b) control over the staff of the Bank.

(2) The Chief Executive Officer may delegate any power or assign any duty to an employee of the Bank including a power delegated to him or her or a duty assigned to him or her by the Board in terms of section 16 unless the Board in its written delegation or assignment to the Chief Executive Officer expressly prohibits such further delegation or assignment. 25

(3) A delegation or assignment under subsection (2) does not prevent the Chief Executive Officer from exercising the delegated power or performing the assigned duty. 30

(4) The Chief Executive Officer may withdraw or amend a delegation or assignment made by him or her.

### Appointment of staff

19. The Chief Executive Officer must—

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(a) employ staff to perform such services as may be necessary to conduct the business of the Bank, on such conditions as the Board determines; and

(b) arrange for the payment to staff of remuneration, allowances, subsidies and other service benefits in accordance with a remuneration structure determined annually by the Board, subject to applicable labour law. 40

### Appointment of advisers

20. The Bank may, on such conditions as the Board may determine, appoint a person to advise the Board or the Bank, as the case may be, on such matters as may be referred to the adviser.

### Conflict of interest

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21. (1) A Board member must, on his or her appointment to the Board, in writing disclose to the Minister and the Board any of his or her material interests which may constitute a conflict of interest in respect of his or her duties as Board member, and he or she must in writing inform the Minister and the Board if any such conflict arises after his or her appointment. 50

(2) (a) A Board member who has a direct or indirect material interest, whether financial or otherwise, in a proposed agreement which is to be entered into by the Bank



must refrain from participating in any discussion or consideration of that agreement and from voting in respect of that agreement.

(b) A Board member who obtains a material interest in an agreement contemplated in paragraph (a) after the agreement has been entered into must table full particulars of the nature and extent of that interest at the first Board meeting following the date on which the interest was obtained. 5

(3) A Board member or employee of the Bank must at any meeting of the Board or the Bank refrain from taking part in the decision-making process in respect of an application for or an agreement in respect of the rendering of financial services by the Bank submitted by a— 10

- (a) person who is related to or is a business or life partner of that member or employee, as the case may be;
- (b) company of which that member or employee, as the case may be, is a director, shareholder or employee;
- (d) close corporation of which that member or employee, as the case may be, is a member or which has a member who is related to or is a business or life partner of that member or employee; 15
- (d) person who is a debtor or creditor of that member or employee;
- (e) person who is in partnership or any financial association with that member or employee; 20
- (f) person who is in the employ of that member or employee; or
- (g) person who is a debtor or creditor under a mortgage bond of any body of persons, whether incorporated or not, of which that member or employee is a director or under which he or she holds any office or position other than that of auditor. 25

(4) The Board may from time to time determine any additional policy or stipulate a code of conduct in respect of conflicts of interest applicable to the Board or employees of the Bank.

(5) A Board member who fails to comply with subsection (2) or (3) may be removed from office by the Minister. 30

(6) No person may disclose any information contemplated in subsection (1) except in terms of a law or court order that compels such disclosure.

(7) Any person who contravenes subsection (6) is guilty of an offence.

### PART III

## FUNDS AND BUSINESS OF BANK 35

### Funds of Bank

22. (1) The funds of the Bank consist of—

- (a) capital vested in the Bank;
- (b) funds derived from its operating activities;
- (c) interest earned on funds invested in terms of section 23; 40
- (d) such funds as may be appropriated by Parliament for use by the Bank;
- (e) proceeds of loans obtained by the Bank;
- (f) subject to subsections (2) and (3), monies received as donations or grants; and
- (g) moneys received on deposit.

(2) The Bank may accept donations and grants to be used in carrying out its developmental mandate. 45

(3) The Bank must utilise donations and grants in accordance with any conditions imposed by the donor concerned, but those conditions may not be inconsistent with the objects of the Bank as contained in this Act.

(4) The Bank must utilise the funds referred to in subsection (1) to achieve the objects of the Bank as contained in this Act. 50

### Investment of funds

23. (1) The Board must adopt an investment policy, to be approved in writing by the Minister, with guidelines to regulate the investment of funds of the Bank in terms of this section. 55

(2) The Bank may not, without the prior written approval of the Minister, invest money in an unlisted company, trust or other equivalent legal entity, business undertaking or venture.

#### **Power to raise additional funds**

24. (1) The Board must adopt a borrowing policy to be approved in writing by the Minister and the Minister of Finance. 5

(2) The borrowing policy must contain guidelines to regulate the Bank's borrowings in terms of this section.

(3) The Bank may raise additional funds, including by way of borrowing, from such persons and on such terms as the Board may determine from time to time, in terms of the borrowing policy contemplated in subsection (1). 10

#### **Distribution of surplus funds**

25. (1) The Board may resolve to distribute to the State such surplus funds held by the Bank as are not required for the operations of the Bank.

(2) The resolution of the Board referred to in subsection (1) may not be implemented unless expressly approved in writing by the Minister. 15

(3) Surplus funds distributed to the State in terms of this section must be paid into the National Revenue Fund.

#### **Conduct of business and security arrangements**

26. (1) The business of the Bank is to provide agricultural and rural financial services in furtherance of the objects of the Bank contemplated in section 3, against security or on such alternative conditions as the Board may from time to time determine, or in such other manner as may be provided for by this Act. 20

(2) The Bank may conduct its business by way of any operation, method or practice envisaged in this Act or in any other applicable law, including but not limited to— 25

- (a) providing finance for the purposes contemplated in section 3;
- (b) investing money;
- (c) providing grant funding;
- (d) providing insurance services within its sphere of operation;
- (e) providing export and import financial services within its sphere of operation; 30
- (f) developing and putting into operation an effective agricultural risk management system;
- (g) discounting secured bills;
- (h) making equity investments;
- (i) acting as a distribution agency for government aid programmes; 35
- (j) acting as a credit guarantee administrator;
- (k) managing, buying, leasing and selling of immovable and movable property;
- (l) providing agency functions on behalf of other persons; and
- (m) in general, making all such advances and performing all such acts as the Bank may by this Act or any other law be authorised to make or perform or which reasonably form part of or are generally associated with agricultural or developmental financial services. 40

(3) The Bank may not conduct any business referred to in paragraphs (b), (c), (d) and (e) of subsection (2) without the written approval of the Minister and must conduct such business in accordance with such conditions as the Minister may impose. 45

(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.

#### **Conditions of business**

27. (1) The Minister may, after consultation with the Board, prescribe the conditions under which the Bank may offer financial services to the public, including but not limited to conditions relating to— 50

- (a) any security or collateral;
- (b) the maintenance, repair and improvements of security or collateral;
- (c) insurance of security or collateral; 55

- (d) interest on advances or other debts;
- (e) repayment of advances or other debts; and
- (f) the Bank's powers of inspection,

and thereafter those conditions must be included in any agreement entered into by the Bank for the provision of agricultural financial services. 5

(2) In the event of the Minister amending any condition made in terms of this section, that amendment must only be included in an agreement entered into by the Bank after the date of promulgation of that amendment.

#### Application for advance

28. (1) The Bank may not make an advance to any person— 10

- (a) unless that person has submitted a written application indicating the purpose for which the advance is required;
- (b) unless that person has met every condition imposed by law or by the Bank in respect of the advance or any matter or thing associated with the advance;
- (c) until every condition pertaining to the security which is proposed to be given in respect of the advance has been met; 15
- (d) until a valuation of the security or any other thing has been completed to the satisfaction of the Bank; and
- (e) until the Bank has, in writing, approved the application and a written agreement has been entered into for the purposes of the advance. 20

(2) The Bank may not provide any agricultural or rural financial service out of the funds of the Bank to any person where such provision might create a conflict of interests unless there has been compliance with section 21.

#### 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. 25

(2) A substitution in terms of subsection (1) does not constitute a novation. 30

(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— 35

- (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, 40

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. 50

#### 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; 55

- (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.

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(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,

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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.

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(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.

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(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

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(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.

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(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.

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(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.

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### 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—

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- (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.

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

## PART IV

## RISK MANAGEMENT AND OTHER OPERATIONAL MATTERS

## Remedies in case of default

33. (1) Despite anything to the contrary in any other law or any agreement and without prejudice to any other remedies the Bank may have, the Bank may in respect of advances that it has made take any action envisaged in subsection (3) if any of the circumstances envisaged in subsection (2) exist. 5

(2) The circumstances contemplated in subsection (1) are if—

- (a) payment of any sum of money, due in respect of any advance made in terms of this Act, is in arrear, whether it is the capital sum or interest thereon; 10
- (b) any such advance has been applied for a purpose other than the purpose for which it was made;
- (c) the advance has not within a reasonable time been applied for the purpose for which it was made;
- (d) any other condition to which the advance is subject has not been complied with substantially; 15
- (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; 20
- (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;
- (f) the debtor is deceased, and his or her estate is about to be dealt with in terms of section 34 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), or has been sequestrated; 25
- (g) the debtor is a company or close corporation which has been placed under judicial management or is being wound up or is being deregistered, as the case may be; or 30
- (h) the debtor is a private company or close corporation and any director, shareholder or member thereof is sentenced to imprisonment without the option of a fine.

(3) As contemplated in subsection (1) the Bank may—

- (a) refuse to pay any portion of an advance which has been approved, but which has not yet been paid; 35
- (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 40
  - (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).

(4) (a) If the Bank makes an application in terms of subsection (3)(b), and if there is evidence supported by affidavit that— 45

- (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; 50
- (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; 55 60

- (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. 5

(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. 10

(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. 15

(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.

(5) The Bank must in pursuance of an order of Court granted in terms of subsection (4) and after the sale of any property of the debtor, transfer that property to the purchaser and give the purchaser a good and valid title thereto without encumbrances. 20

(6) The Bank may make an advance in terms of this Act and on such conditions as it may deem fit to the purchaser of the property envisaged in subsection (5), for the purpose of defraying the whole or part of the purchase price.

(7) The proceeds of a sale pursuant to a court order contemplated in subsection (4) must be applied as envisaged in section 30. 25

(8) Where the property sold is immovable property the Bank must submit a certified copy of the court order contemplated in subsection (4) to the Registrar of Deeds who must make the appropriate entries or endorsements on the relevant title deeds to effect the transfer of the property to the purchaser. 30

(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 35

(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. 40

(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. 45 50

(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. 55

(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 60

liquidated, or the Bank proceeds in terms of subsection (3), within a period of 12 months after the Bank made that advance.

#### **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— 5

- (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 10
- (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. 15

(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.

#### **Financial management**

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35. (1) The Board must cause the necessary books of account to be kept.

(2) The books of account and financial statements of the Bank must be audited by the Auditor-General annually.

(3) The Board must ensure that annual budgets and corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999). 25

#### **Subsidiaries**

36. (1) The Bank may, subject to the Public Finance Management Act, 1999, and with the written approval of the Board, form a wholly owned subsidiary if necessary for its effective operation and the carrying out of its objectives. 30

(2) The majority of the directors of a subsidiary company established by the Bank must be members of the Board.

(3) The memorandum and articles of association of a subsidiary established by the Bank must be approved by the Board prior to its adoption and registration by the Registrar of Companies. 35

#### **Joint ventures**

37. The Bank may, subject to the Public Finance Management Act, 1999, and with the approval of the Board, enter into a joint venture with any person for purposes of furthering the objects of the Bank as contained in this Act.

#### **General operations**

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38. (1) The Bank may, at the request of the Minister or another government Department or organ of state, provide such services as it may reasonably be able to render on an agency basis to such parties as the Minister directs on such conditions as the Minister after consultation with the Board may in writing determine.

(2) The Bank may act as adviser to the government and organs of state in respect of matters within or associated with the Bank's objectives, and on such terms as may be determined by the Minister from time to time. 45

(3) The Bank may within the ambit of its objects provide services to private companies and persons on such conditions as the Board may from time to time determine. 50

### Transfer of assets

39. The State may transfer assets to the Bank in order to further the objects of the Bank on such terms and conditions as the State may determine.

### Immovable property

40. (1) The Bank may acquire, hold or dispose of immovable property in the course of its business. 5

(2) The Board must determine the policy and procedure of the Bank with regard to the acquisition and disposal of immovable property.

(3) The Minister may, subject to subsection (4), direct the Bank to make available for purposes of agrarian reform any immovable property it may have acquired from a debtor of the Bank who has defaulted on the repayment of an advance made by the Bank. 10

(4) Any immovable property made available by the Bank in terms of subsection (3) may be transferred to and registered in the name of another person only after payment of the productive value for purposes of agrarian reform of that property has been received by the Bank or arrangements have been approved by the Board for payment subsequent to that transfer and registration, whether in instalments or not. 15

### Preparation and execution of documents and exemption from stamp duties and other fees

41. (1) Notwithstanding the provisions of any other law and for purposes of carrying out the Bank's functions— 20

- (a) any deed of transfer, mortgage bond, notarial bond or document relating to any other security acquired or disposed of by the Bank within the course and scope of its business may be prepared and executed by any employee of the Bank specially appointed by the Bank for that purpose, and that employee may, with respect to that document, perform the functions of a conveyancer or a notary public even if he or she is not admitted as such, and all such deeds, bonds or other documents must, if registrable, be accepted for registration in any deeds registry or other registration office of the Republic; 25
- (b) any person admitted as a conveyancer or a notary public, employed by the Bank and rendering professional conveyancing or notarial services to the Bank is not obliged to charge a fee for such services; 30
- (c) no stamp or transfer duty is payable in respect of any transfer of property to the Bank and no charge or fee of office is payable in respect of any note made on any document at the request of the Bank in any deeds registry or other registration office or in respect of the cancellation of any such note; 35
- (d) the Bank is not liable for the payment of any search or inspection fee in any master's office, surveyor-general's office, deeds registry or other registration office.

### Fees and charges

42. The Board must from time to time approve a structure of fees and charges to be charged by the Bank for its services. 40

## PART V

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### ADMINISTRATIVE AND TRANSITIONAL MATTERS

#### Security of confidential information held by Bank

43. (1) Subject to the Constitution and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may—

- (a) in any way disclose any information submitted by any person in connection with any application for any agricultural financial service rendered or offered by the Bank; or 50



(b) publish any information obtained in contravention of paragraph (a), unless ordered to do so by a court of law or unless the person who made such application consents thereto in writing.

(2) Any person who contravenes subsection (1) is guilty of an offence.

### **Winding up of Bank**

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44. The Bank may not be wound up except by or in terms of an Act of Parliament.

### **Judicial management of Bank**

45. A judicial management order in terms of the Companies Act, 1973 (Act No. 61 of 1973), may be granted in respect of the Bank by a competent court only on application by the Minister or the Board.

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### **Use of name of Bank**

46. (1) No person who is not in writing authorised by the Bank to do so may—

(a) use the name of the Bank or the names “Land Bank” or “Landbank”; or

(b) give out or pretend that he or she represents the Bank in any way, including by the use of logos, designs or advertising material used or owned by the Bank.

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(2) Any person who contravenes subsection (1) is guilty of an offence.

### **General offences**

47. (1) If a Bank employee or a Board member, or any adviser, agent, inspector or valuer employed by the Bank directly or indirectly accepts any fee or reward for his or her personal advantage from any person in respect of or in connection with any financial service rendered or offered by the Bank or any application for such financial service, he or she is guilty of an offence.

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(2) Any person who bribes or attempts to bribe, or corruptly influences or attempts to corruptly influence a Bank employee or Board member, or any adviser, agent, inspector or valuer employed by the Bank in connection with any financial service rendered or offered by the Bank under this Act or with any application for such financial service, is guilty of an offence.

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(3) Any person who—

(a) having any pecuniary interest in any land offered as security for financial services rendered or offered by the Bank under this Act;

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(b) being a creditor or debtor of an applicant for any financial services rendered or offered by the Bank under this Act, or being related to or being a business or life partner of such an applicant;

(c) if the applicant is a company, being a director or shareholder thereof, or being related to or being a business or life partner of such director or shareholder; or

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(d) if the applicant is a close corporation, being a member thereof, or being related to or being a business or life partner of such member,

acts as a valuer in connection with the land offered as security for any financial service rendered or offered by the Bank, or as an adviser in connection with such financial service, or attends any meeting of the Board and votes upon any resolution having reference to such land or financial service, is guilty of an offence.

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### **Penalties**

48. Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment or to both a fine and imprisonment.

### **Regulations**

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49. (1) The Minister may make regulations not inconsistent with this Act concerning—

(a) any matter that must or may be prescribed in terms of this Act;

(b) the duties and accountability of members of the Board;

(c) offences relating to anything that must or may be done or is prohibited in terms of any regulation made under this section;

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(d) any matter which it is necessary to prescribe for the effective implementation of this Act.

(2) The Minister may in terms of subsection (1) prescribe a penalty in respect of an offence contemplated in subsection (1)(c), of a fine or imprisonment for a period not exceeding 12 months.

(3) A regulation made in terms of subsection (1) may differentiate between different groups, categories or classes of persons if that differentiation is not prohibited by the Constitution.

### Valuations

50. (1) The Bank may at any time require a valuation in respect of any security or collateral or property relevant to any agricultural financial service rendered or offered by the Bank.

(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.

(3) Despite anything in any law to the contrary, the Bank has free access to the valuation roll of any municipality, and any employee of a municipality must supply without fee or charge to the Bank, upon application, particulars as to any valuation of rateable property in respect of which that authority has power to charge rates or taxes.

### Inspections on behalf of Bank

51. (1) An employee of the Bank, a valuer appointed or instructed in terms of section 50(2) or any other person authorised in writing by the Bank may, subject to subsection (2), enter upon and inspect any property relating to an agreement with the Bank.

(2) A person referred to in subsection (1) may—

- (a) enter and inspect property referred to in subsection (1) at any reasonable time during the day for purposes of ascertaining whether an advance has been or is being applied properly and whether the conditions of any advance are being observed, or for valuation purposes;
- (b) make extracts from any document or information system which are necessary for the purposes of the inspection; and
- (c) in writing require the owner or occupier of the property, or the agent of the owner or occupier, to give that person written particulars regarding the property which are necessary for the purposes of the inspection.

### Transitional matters

52. (1) Anything validly done in terms of the Land Bank Act, 1944 (Act No. 13 of 1944), continues to be valid and of full force and effect despite the repeal of that Act by section 53 and any regulations made in terms of that Act remain in force until repealed in terms of section 49 of this Act.

(2) Every person who was an employee of the Land and Agricultural Bank of South Africa operating in terms of the Land Bank Act, 1944, immediately before the repeal of that Act is regarded as having been appointed in terms of section 17 or 19, as the case may be, of this Act, and the employment agreement existing between that person and the Bank immediately before the commencement of this Act continues to have full force and effect without any change as if it had been concluded by virtue of this Act.

(3) Unless every applicable provision of labour legislation had been complied with and unless a person contemplated in subsection (2) agrees thereto in writing, the remuneration and other terms and conditions of employment applicable to that person immediately before the commencement of this Act remain applicable to that person after the commencement of this Act, and he or she remains entitled to all rights, benefits and privileges to which he or she was entitled immediately before the commencement of this Act, including but not limited to—

- (a) membership of a pension fund;
- (b) membership of a medical aid scheme;

- (c) employer contributions in connection with such membership;
- (d) accrued pensionable service;
- (e) accrued leave benefits;
- (f) remuneration;
- (g) leave benefits; and
- (h) retirement at a specific age.

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(4) Despite any provision to the contrary in any law and for the purposes of any law, no change of employer is regarded as having taken place in respect of any employee of the Bank contemplated in subsection (2).

(5) Any proceedings involving the Bank, whether they be litigation in court or any hearing of whatever nature in terms of labour legislation, which had been instituted immediately before the commencement of this Act, must be disposed of as if this Act had not been enacted, and the Bank retains any rights it had in respect thereof immediately before the commencement of this Act.

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(6) The registrar of deeds must make any entries or endorsements which may be necessary to reflect the correct position regarding ownership of property as a result of section 2 and no office fee or other charge is payable in respect of such entries or endorsements.

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(7) Any reference in any legislation to the Land and Agricultural Bank of South Africa or the Land Bank Act, 1944, must be interpreted as a reference to the Bank or to this Act, as the case may be.

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#### **Repeal of Act 13 of 1944**

53. The Land Bank Act, 1944 (Act No. 13 of 1944), is hereby repealed.

#### **Short title and commencement**

54. This Act is called the Land and Agricultural Development Bank Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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## **MEMORANDUM ON THE OBJECTS OF THE LAND AND AGRICULTURAL DEVELOPMENT BANK BILL, 2002**

### **GENERAL**

The Land and Agricultural Bank of South Africa ("the Land Bank") was established by the Land Bank Act, 1912 (Act No. 18 of 1912), which was repealed and replaced by the current Land Bank Act, 1944 (Act No. 13 of 1944) ("the Act"). Cabinet on 6 August 1997 inter alia approved the policy principles contained in the recommendations of the Strauss Commission Report on the provision of rural financial services, including a recommendation that the role of the Land Bank be extended and that legislative changes be effected to enable the Land Bank to take on the new role as envisaged in the Strauss Commission Report.

The Constitutional Court in the matter of First National Bank of South Africa Ltd v Land and Agricultural Bank of South Africa; Sheard v Land and Agricultural Bank of South Africa 2000 (8) BCLR 876 (CC) held that certain parts of sections 34 and 55 of the Act were unconstitutional, the invalidity being suspended for a period of two years. Sections 34 and 55 inter alia provide for remedies of the Land Bank against defaulting debtors, permitting the Land Bank to recover debts without recourse to a court of law and without having to follow ordinary legal procedures, and conferring a form of statutory preference on the Land Bank which can have the effect that it is in some instances able to recover monies from debtors to which other creditors would, on ordinary legal principles, have a prior claim. Those sections have to be amended or replaced by 9 June 2002 to escape invalidation.

In addition, the current Act has become outdated and does not adequately provide for the role the Bank needs to play in the development of the country. This Bill therefore also focuses, in addition to the Bank's activities in the sphere of agricultural financing, on the developmental role of the Bank, enabling it to support other government programmes concerned with land reform, agrarian development and the eradication of inequalities. This Bill deals inter alia with these issues and proposes to replace the current Act.

### **CONSULTATION**

The following persons or institutions were consulted or provided input or comment:

- The Department of Agriculture
- The Department of Land Affairs
- Land and Agricultural Bank of South Africa
- Banking Council of South Africa
- First National Bank
- Nedcor
- Standard Bank of South Africa

### **FINANCIAL IMPLICATIONS FOR STATE**

The cost of the drafting and promotion of the Bill will be borne by the Land Bank.

### **PARLIAMENTARY PROCEDURE**

The Department of Agriculture and the State Law Advisers are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution since it contains no provision to which section 74 or 76 of the Constitution applies.